

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 96-1, page 7.

Valuation of a remainder interest in property transferred to a new pooled income fund under section 642(c)(5). The deemed rate of return computed under section 7520 of the Code is provided for transfers in calendar year 1996 to new pooled income funds that have been in existence for less than 3 taxable years.

EMPLOYEE PLANS

Rev. Proc. 96-4, page 94.

Rulings and determination letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters relating to sections of the Code under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). Rev. Proc. 95-4 superseded.

Rev. Proc. 96-5, page 129.

Technical advice. Revised procedures are provided for furnishing technical advice to key district directors and chiefs, appeals offices, by the Assistant Commissioner (Employee Plans and Exempt Organizations) regarding issues in the employees plans areas (including actuarial matters) and exempt organizations areas. Rev. Proc. 95-5 superseded.

Rev. Proc. 96-6, page 151.

Employee plans determination letters. Revised procedures are provided for issuing determination letters on the qualified status of employee plans under sections

401(a), 403(a), 409, and 4975 of the Code. Rev. Proc. 95-6 superseded.

Rev. Proc. 96-8, page 187.

User fees for employee plans and exempt organizations. Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) is provided. Rev. Proc. 95-8 superseded.

EXEMPT ORGANIZATIONS

Rev. Proc. 96-4, page 94.

Rulings and determination letters; issuance procedures. Revised procedures are provided for furnishing ruling letters, information letters, etc., on matters relating to sections of the Code under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). Rev. Proc. 95-4 superseded.

Rev. Proc. 96-5, page 129.

Technical advice. Revised procedures are provided for furnishing technical advice to key district directors and chiefs, appeals offices, by the Assistant Commissioner (Employee Plans and Exempt Organizations) regarding issues in the employee plans areas (including actuarial matters) and exempt organizations areas. Rev. Proc. 95-5 superseded.

Rev. Proc. 96-8, page 187.

User fees for employee plans and exempt organizations.
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Cumulative List of Actions Relating to Decisions of the Tax Court published in the Bulletin from January through December 1995 begins on page 5.
Finding List of Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in the Bulletin from July through December 1995 begins on page 204.

Finding List of Previously Published Items currently mentioned in the Bulletin from July through December 1995 begins on page 206.

Cumulative List of Declaratory Judgment Proceedings Under Section 7428 begins on page 201.

Index of Items Published in the Bulletin from July through December 1995 begins on page 209.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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HIGHLIGHTS OF THIS ISSUE—Continued

EXEMPT ORGANIZATIONS—Continued

Up-to-date guidance for complying with the user fee program of the Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) is provided. Rev. Proc. 95-8 superseded.

ADMINISTRATIVE

Rev. Proc. 96-1, page 8.

Letter rulings, determination letters, and information letters issued by the Associate Chief Counsel (Domestic), Associate Chief Counsel (Employee Benefits and Exempt Organizations), Associate Chief Counsel (Enforcement Litigation), and Associate Chief Counsel (International). Revised procedures are provided for issuing letter rulings, determination letters, and information letters on specific issues under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International). Rev. Proc. 95-1 superseded. Rev. Procs. 91-22, 92-20, and 92-85 modified.

Rev. Proc. 96-2, page 60.

Technical advice to the district directors and chiefs, appeals offices, from the Associate Chief Counsel (Domestic), Associate Chief Counsel (Employee Benefits

and Exempt Organizations), Associate Chief Counsel (Enforcement Litigation), and Associate Chief Counsel (International). Revised procedures are provided for furnishing technical advice to the district directors and chiefs, appeals offices, in areas under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International). Taxpayers' rights when technical advice has been requested also are provided. Rev. Proc. 95-2 superseded.

Rev. Proc. 96-3, page 82.

Areas in which advance rulings will not be issued; Associate Chief Counsel (Domestic), Associate Chief Counsel (Employee Benefits and Exempt Organizations). This procedure provides a revised list of those provisions of the Code under the jurisdiction of the Associate Chief Counsel (Domestic) and the Associate Chief Counsel (Employee Benefits and Exempt Organizations) relating to matters where the Service will not issue advance rulings or determination letters. Rev. Procs. 95-3 and 95-50 superseded.

Rev. Proc. 96-7, page 185.

Areas in which advance rulings will not be issued: Associate Chief Counsel (International). This procedure lists the subject matters under the jurisdiction of the Associate Chief Counsel (International) in which the Service will not issue advance letter rulings or determination letters. Rev. Proc. 95-7 superseded.

Cumulative List of Actions Relating to Court Decisions Published in the Internal Revenue Bulletin from January 1, 1995 through December 31, 1995

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now

may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The announcements published in

the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year, and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCE in the following decisions:

Baker, Willard K. & Irene L.,¹ 748 F.2d 1465 (11th Cir. 1984)

Kisling, Est. of,² 32 F.3d 1222 (8th Cir. 1994)

Louisiana Land & Exploration Co.,³ 102 T.C. 21 (1994)

National Semiconductor Corp. & Consolidated Subs. v. Commissioner,⁴ T.C. Memo 1994-195

Seagate Technology, Inc. & Consolidated Subs.,⁵ 102 T.C. 149 (1994)

Taisei Fire & Marine Inc. Co., Ltd., et al. v. Commissioner,⁶ 104 T.C. 535 (1995)

Trump Village v. Commissioner,⁷ T.C. Memo 1995-281

The Commissioner does NOT ACQUIESCE in the following decisions:

Louisiana Land & Exploration Co.,⁸ 90 T.C. 630 (1988)

Louisiana Land & Exploration Co.,⁹ 102 T.C. 21 (1994)

Milligan, Robert E., v. Commissioner,¹⁰ 38 F.3d 1094 (9th Cir. 1994)

¹Acquiescence relating to whether Rev. Rul. 80-173, 1980-2 C.B. 60, should be applied retroactively to disallow a section 162(a) deduction for flight training course expenses.

²Acquiescence relating to whether transfers of irrevocable fractional shares in a revocable trust to donees designated by decedent within the three-year period preceding the death of decedent are includible in decedent's gross estate pursuant to sections 2035(d)(2) and 2038(a)(1) of the Code.

³Acquiescence in the issue relating to whether costs related to acquiring, transporting and installing gas processing equipment and the offshore modules that house such equipment are deductible as intangible drilling and development costs. Acquiescence in result in the issue relating to whether the Claus method used by plaintiff to recover elemental sulphur from hydrogen sulfide produced from an oil or gas well qualified as a mining process for percentage depletion purposes. Acquiescence "in result" means acceptance of the Court but disagreement with some or all the reasons assigned for the decision.

⁴Acquiescence in result relating to whether (i) prices paid by petitioner's offshore Asian subsidiaries for silicon wafers manufactured by petitioner in the U.S., and incorporated by the former into electronic products, and (ii) the prices that petitioner paid the subsidiaries for the completed products were arm's length. Acquiescence "in result" means acceptance of the Court but disagreement with some or all the reasons assigned for the decision.

⁵Acquiescence in result relating to whether certain royalties attributable to intangibles that petitioner transferred to its wholly-owned subsidiary, and the prices that petitioner paid the subsidiary for products manufactured by the latter, were arm's length. Acquiescence "in result" means acceptance of the Court but disagreement with some or all the reasons assigned for the decision.

⁶Acquiescence relating to whether four Japanese reinsurance companies have agency permanent establishments in the U.S. because their U.S. agent was not "an agent of independent status" under Article 9(5) of the U.S.-Japan Tax Treaty.

⁷Acquiescence relating to whether the limitations of section 277 apply to a cooperative housing corporation described in section 216, which is also subject to the provisions of subchapter T of the Code.

Cumulative List of Actions Relating to Court Decisions Published in the Internal Revenue Bulletin from January 1, 1995 through December 31, 1995—Continued

Morganbesser, Marvin D., et al. v. U.S.,¹¹ 984 F.2d 560 (2d Cir. 1993)
Placid Oil Co. v. IRS,¹² 988 F.2d 554 (5th Cir. 1993)
St. Jude Medical, Inc. v. Commissioner,¹³ 97 T.C. 457 (1991) (8th Cir. 1994)
Sealy Power Ltd.,¹⁴ 46 F.3d 382 (5th Cir. 1995)
Security Bank Minnesota v. Commissioner,¹⁵ 994 F.2d 432 (8th Cir. 1993)
Vulcan Materials Co. & Subsidiaries v. Commissioner,¹⁶ 959 F.2d 973 (11th Cir. 1992)

⁸Nonacquiescence relating to whether section 613A(e)(2) of the Code eliminates percentage depletion under section 613 for nonhydrocarbon minerals produced from an oil or gas well.

⁹Nonacquiescence relating to whether all income from the sales of oil, gas and sulphur are to be combined when calculating the taxable income from the property under section 613(a) of the Code, even though the oil and gas income is subject to a separate depletion regimen.

¹⁰Nonacquiescence relating to whether payments to a former insurance agent, which are based on the amount of compensation during the last twelve months as an agent, derive from a trade or business carried on by the individual, so as to be subject to tax under the Self-Employment Contributions Act (SECA).

¹¹Nonacquiescence relating to whether the Second Circuit Court of Appeals, in affirming the U.S. District Court for Connecticut, erred as a matter of law in determining that a multiemployer pension trust was a labor organization exempt under section 501(c)(5) of the Code.

¹²Nonacquiescence relating to whether the U.S. or the taxpayer bears the ultimate burden of proof in bankruptcy proceedings in which the taxpayer challenges a federal income tax claim arising from the disallowance of deductions.

¹³Nonacquiescence relating to whether section 1.861-8(e)(3) of the regulations is invalid as applied to DISC combined taxable income calculations.

¹⁴Nonacquiescence relating to whether an electrical generating facility that produced only *de minimis* amounts of electricity on a sporadic basis in 1984 due to functional deficiencies in its equipment "placed in service" was within the meaning of sections 46 and 167 of the Code.

¹⁵Nonacquiescence relating to whether a cash method bank that makes short-term loans with a stated interest rate to customers in the ordinary course of its business is subject to accrual of the interest on those loans under section 1281(a)(2) of the Code.

¹⁶Nonacquiescence relating to whether the term "accumulated profits" as used in the denominator of the section 902 deemed paid credit fraction before the Tax Reform Act of 1986 means all of the foreign corporation's accumulated profits for the taxable year.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 170.—Charitable, etc., Contributions and Gifts

26 CFR 1.170A-6: Charitable contributions in trust.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, below.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-6: Valuation of a remainder interest in property transferred to a pooled income fund. (Also §§ 170, 2055, 2522, 7520; 1.170A-6, 20.2055-2, 25.2522(c)-3, 1.7520-1, 20.7520-1, 25.7520-1.)

Valuation of a remainder interest in property transferred to a new pooled income fund under section 642(c)(5). The deemed rate of return computed under section 7520 of the Code is provided for transfers in calendar year 1996 to new pooled income funds that have been in existence for less than 3 taxable years.

Rev. Rul. 96-1

This revenue ruling lists the calendar year 1996 deemed rate of return computed under § 7520 of the Internal Revenue Code for pooled income funds (PIFs) described in § 642(c)(5) that have been in existence for less than 3 years immediately preceding the 1996 taxable year in which a transfer is made to the PIF.

Under § 7520, the value of annuities, interests for life or terms of years, and remainder or reversionary interests created after April 30, 1989, are determined by using (1) the interest rate (rounded to the nearest 2/10ths of 1 percent) equal to 120 percent of the applicable federal midterm rate under § 1274(d)(1) for the month in which the valuation date falls, and (2) life contingencies in mortality tables prescribed in the regulations.

Section 1.642(c)-6(e)(2) of the Income Tax Regulations provides that the present value of an income interest in property transferred to a PIF is computed on the basis of life contingencies

prescribed under § 20.2031-7(d)(6) of the Estate Tax Regulations and an interest rate equal to the highest yearly rate of return of the PIF for the 3 taxable years immediately preceding the taxable year in which the transfer to the PIF is made. A deemed rate of return must be used for any transfer to a new PIF until the PIF has been in existence for 3 taxable years and can compute its highest rate of return for the 3 taxable years immediately preceding the taxable year in which the transfer to the PIF is made. See § 1.642(c)-6(e)(2)(ii).

If a transfer is made to a new PIF after April 30, 1989, the deemed rate of return is the interest rate (rounded to the nearest 2/10ths of 1 percent) that is 1 percent less than the highest annual average of the monthly § 7520 rates for the 3 calendar years immediately preceding the calendar year in which the transfer to the PIF is made. See § 1.642(c)-6(e)(3).

The deemed rate of return for transfers to a new PIF during taxable year 1996 is 7.2 percent.

The following Table lists the rate for transfers to new PIFs in 1996 and the rates for transfers to new PIFs in each of the past 7 calendar years.

Rev. Rul. 96-1 Table	
Deemed Rates of Return for Transfers to New Pooled Income Funds	
<i>Time of Transfer</i>	<i>Deemed Rate of Return</i>
1989 (Jan.-Apr.)	9.0
1989 (May-Dec.)	9.4
1990	9.8
1991	9.8
1992	9.8
1993	9.4
1994	8.4
1995	6.8
1996	7.2

DRAFTING INFORMATION

The principal author of this revenue ruling is William L. Blodgett of the Office of Assistant Chief Counsel (Passthroughs and Special Industries).

For further information regarding this revenue ruling contact Mr. Blodgett on (202) 622-3090 (not a toll-free call).

Section 2055.—Transfers for Public, Charitable, and Religious Uses

26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, this page.

Section 2522.—Charitable and Similar Gifts

26 CFR 25.2522(c)-3: Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, this page.

Section 7520.—Valuation Tables

26 CFR 1.7520-1: Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, this page.

26 CFR 20.7520-1: Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, this page.

26 CFR 25.7520-1: Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

During calendar year 1996, if a taxpayer transfers property to a new pooled income fund that has been in existence for less than 3 taxable years, what deemed rate of return is used to value the remainder interest? See Rev. Rul. 96-1, this page.

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Rev. Proc. 96-1

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 - (5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending
 - (6) Statement of supporting authorities
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- p. 34 .01 Controls request and refers it to appropriate Assistant Chief Counsel or to the Office of Associate Chief Counsel (International)
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- .03 Notifies taxpayer if any issues have been referred to other branches
- .04 Determines if transaction can be modified to obtain favorable letter ruling
- .05 Is not bound by informal opinion expressed
- .06 Tells taxpayer if request lacks essential information during initial contact
- .07 Requires prompt submission of additional information requested after initial contact
- .08 Schedules a conference if requested by taxpayer
- .09 Permits taxpayer one conference of right
- .10 Disallows verbatim recording of conferences
- .11 Makes tentative recommendations on substantive issues
- .12 May offer additional conferences
- .13 Requires written confirmation of information presented at conference
- .14 May schedule pre-submission conference
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- .03 Will be used by a district director in examining the taxpayer's return

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- .05 Not generally revoked or modified retroactively
- .06 Retroactive effect of revocation or modification applied to a particular transaction
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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International). It explains the kinds of guidance and the manner in which guidance is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix B.

Description of terms used in this revenue procedure

For purposes of this revenue procedure—

(1) any reference to district director or district office includes their respective offices or, when appropriate, the Assistant Commissioner (International);

(2) the word “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including issuers of § 103 obligations) and, when appropriate, their representatives; and

(3) the word “national office” refers to the Office of Associate Chief Counsel (Domestic), the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Office of Associate Chief Counsel (Enforcement Litigation), or the Office of Associate Chief Counsel (International), as appropriate.

Updated annually

The revenue procedure is updated annually as the first revenue procedure of the year, but may be modified or amplified during the year.

SECTION 2. IN WHAT FORM IS GUIDANCE PROVIDED BY THE OFFICES OF ASSOCIATE CHIEF COUNSEL (DOMESTIC), ASSOCIATE CHIEF COUNSEL (EMPLOYEE BENEFITS AND EXEMPT ORGANIZATIONS), ASSOCIATE CHIEF COUNSEL (ENFORCEMENT LITIGATION), AND ASSOCIATE CHIEF COUNSEL (INTERNATIONAL)?

The Service provides guidance in the form of letter rulings, closing agreements, determination letters, information letters, revenue rulings, and oral advice.

Letter ruling

.01 A “letter ruling” is a written statement issued to a taxpayer by the national office that interprets and applies the tax laws to the taxpayer’s specific set of facts. A letter ruling includes the written permission or denial of permission by the national office to a request for a change in a taxpayer’s accounting method or accounting period. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 11 of this revenue procedure, unless it is accompanied by a “closing agreement.”

Closing agreement

.02 A closing agreement is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, a taxpayer may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. However, if the issue and holding are identical for the class and there are more than 25 taxpayers in the class, a “mass closing agreement” will be entered into with the taxpayer who is authorized by the others to represent the class.

Determination letter

.03 A “determination letter” is a written statement issued by a district director that applies the principles and precedents previously announced by the national office to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

A determination letter does not include assistance provided by the U.S. competent authority pursuant to the mutual agreement procedure in tax treaties as set forth in Rev. Proc. 91–23, 1991–1 C.B. 534, as amplified by Rev. Proc. 91–22, 1991–1 C.B. 526, and as clarified by Rev. Proc. 91–26, 1991–1 C.B. 543.

Information letter

.04 An “information letter” is a statement issued either by the national office or by a district director. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. An information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter. An information letter is advisory only and has no binding effect on the Service.

Revenue ruling

.05 A “revenue ruling” is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are issued only by the national office and are published for the information and guidance of taxpayers, Service personnel, and other interested parties.

Because each revenue ruling represents the conclusion of the Service regarding the application of law to the entire statement of facts involved, taxpayers, Service personnel, and other concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, revenue rulings, notices, and announcements. See Rev. Proc. 89–14, 1989–1 C.B. 814, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

Oral guidance

.06

(1) No oral rulings, and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. However, Service employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Service will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings or determination letters for a particular case.

(2) Discussion possible on substantive issues.

At the discretion of the Service and as time permits, substantive issues also may be discussed. However, such a discussion will not be binding on the Service and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer’s representative ordinarily will be asked whether the oral request for guidance or information relates to a matter pending before another office of the Service.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative in a district office or service center when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not confirmation of the substance of the letter.

Taxpayers may request letter rulings, information letters, and closing agreements under this revenue procedure on issues within the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International). The national office issues letter rulings to answer written inquiries of individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions when appropriate in the interest of sound tax administration.

Taxpayers also may request determination letters within the jurisdiction of the appropriate district director offices that relate to the Code sections under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International).

.01 Issues under the jurisdiction of the Associate Chief Counsel (Domestic) include all issues under the jurisdiction of the various Assistant Chief Counsels as explained below.

(1) Issues under the Assistant Chief Counsel (Corporate) include those that involve consolidated returns, corporate acquisitions, reorganizations, liquidations, redemptions, spinoffs, transfers to controlled corporations, distributions to shareholders, corporate bankruptcies, the effect of certain ownership changes on net operating loss carryovers and other tax attributes, debt vs. equity determinations, allocation of income and deductions among taxpayers, acquisitions made to evade or avoid income tax, and certain earnings and profits questions.

(2) Issues under the Assistant Chief Counsel (Financial Institutions and Products) include those that involve income taxes and accounting method changes of banks, savings and loan associations, real estate investment trusts (REITs), regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), tax-exempt obligations, mortgage credit certificates (MCCs), insurance companies and products, and financial products.

(3) Issues under the Assistant Chief Counsel (Income Tax and Accounting) include those that involve recognition and timing of income and deductions of individuals and corporations, sales and exchanges, capital gains and losses, installment sales, equipment leasing, inventories, the alternative minimum tax, accounting method changes for these and other miscellaneous issues, various administrative provisions, and accounting periods.

(4) Issues under the Assistant Chief Counsel (Passthroughs and Special Industries) include those that involve income taxes of S corporations (except accounting periods and methods) and certain noncorporate taxpayers (including partnerships, common trust funds, and trusts); entity classification; estate, gift, generation-skipping transfer, and certain excise taxes; amortization, depreciation, depletion, and other engineering issues; accounting method changes for depreciation and amortization; cooperative housing corporations; farmers' cooperatives (under § 521); the low-income housing, disabled access, and qualified electric vehicle credits; research and experimental expenditures; shipowners' protection and indemnity associations (under § 526); and certain homeowners associations (under § 528).

.02 Issues under the jurisdiction of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) include those that involve income tax and other tax aspects of executive compensation and employee benefit programs (other than those within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations)), employment taxes, and taxes on self-employment income.

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Associate Chief Counsel (Domestic)

Issues under the Assistant Chief Counsel (Corporate)

Issues under the Assistant Chief Counsel (Financial Institutions and Products)

Issues under the Assistant Chief Counsel (Income Tax and Accounting)

Issues under the Assistant Chief Counsel (Passthroughs and Special Industries)

Issues under the jurisdiction of the Associate Chief Counsel (Employee Benefits and Exempt Organizations)

Issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation)

.03 Issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation) include issues only under the jurisdiction of the Assistant Chief Counsel (General Litigation). Issues under the Assistant Chief Counsel (General Litigation) include those that involve collection.

Issues under the jurisdiction of the Associate Chief Counsel (International)

.04 Issues under the jurisdiction of the Associate Chief Counsel (International) include the tax treatment of nonresident aliens and foreign corporations; withholding of tax on nonresident aliens and foreign corporations; foreign tax credit; determination of sources of income; income from sources without the United States; subpart F questions; domestic international sales corporations (DISCs); foreign sales corporations (FSCs); international boycott determinations; treatment of certain passive foreign investment companies; and income affected by treaty.

For the procedures to obtain advance pricing agreements under § 482, see Rev. Proc. 91-22, 1991-1 C.B. 526, as corrected by Rev. Proc. 91-22A, 1991-1 C.B. 534, and as modified by Rev. Proc. 96-1 (this revenue procedure) and Rev. Proc. 96-8, this Bulletin.

For the procedures concerning competent authority relief arising under the application and interpretation of tax treaties between the United States and other countries, see Rev. Proc. 91-23. However, competent authority consideration for an advance pricing agreement should be requested under Rev. Proc. 91-22.

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. (*See* 26 C.F.R. § 601.328 (1995)).

Employee plans and exempt organizations

.02 The procedures for obtaining letter rulings, determination letters, etc., on employee plans and exempt organizations are under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). *See* Rev. Proc. 96-4, this Bulletin. *See also* Rev. Proc. 96-6, this Bulletin, for the procedures for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under §§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a).

For the user fee requirements applicable to requests for letter rulings, determination letters, etc., under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations), see Rev. Proc. 96-8.

SECTION 5. UNDER WHAT CIRCUMSTANCES DOES THE NATIONAL OFFICE ISSUE LETTER RULINGS?

In income and gift tax matters

.01 In income and gift tax matters, the national office generally issues a letter ruling on a proposed transaction and on a completed transaction if the letter ruling request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed.

(1) Circumstances under which a letter ruling is not ordinarily issued. The national office ordinarily does not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

(a) is being examined by a district director;

(b) is being considered by an appeals office;

(c) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(d) has been examined by a district director or considered by an appeals office and the statutory period of limitations has not expired for assessment or for filing a claim for refund or credit of tax; or

(e) has been examined by a district director or considered by an appeals office and a closing agreement covering the issue or liability has not been entered into by a district director or by an appeals office.

If a return dealing with an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the national office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or the identical issue on an earlier year's return has been started by a district director. *See* section 8.04 of this revenue procedure. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the district director agrees, by memorandum, to the issuance of the letter ruling.

(2) No letter ruling on a property conversion after return filed. The national office does not issue a letter ruling on the replacement of involuntarily converted property, whether or not the property has been replaced, if the taxpayer has already filed a return for the taxable year in which the property was converted. However, the district director may issue a determination letter in this case. *See* section 6.01 of this revenue procedure.

(3) Entity classifications. The national office generally does not issue a letter ruling on the classification of an organization if a return has been filed for the organization for an earlier period. However, the national office will consider letter ruling requests concerning the classification of—

(a) an existing organization as a partnership. *See* Rev. Proc. 92-35, 1992-1 C.B. 790, as amplified by Rev. Proc. 94-46, 1994-2 C.B. 688; Rev. Proc. 89-12, 1989-1 C.B. 798, as supplemented by Rev. Proc. 92-33, 1992-1 C.B. 782, as modified by Rev. Proc. 95-10, 1995-1 C.B. 501, and as amplified by Rev. Proc. 94-46 and Rev. Proc. 91-13, 1991-1 C.B. 477 (checklist questionnaire); and Rev. Proc. 86-12, 1986-1 C.B. 534; or

(b) a domestic or foreign limited liability company as a partnership for federal tax purposes. *See* Rev. Proc. 95-10.

.02 The national office will consider a request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations. Even if submitted after the return covering the issue presented in the § 301.9100-1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by an appeals office, a § 301.9100-1 request is a letter ruling request. Therefore, the § 301.9100-1 request should be submitted pursuant to this revenue procedure.

However, an election made pursuant to section 4 of Rev. Proc. 92-85, 1992-2 C.B. 490, as modified by Rev. Proc. 96-1 (this revenue procedure), and Rev. Proc. 93-28, 1993-2 C.B. 344, is not a letter ruling request and does not require payment of any user fee. *See* section 14.03(1) of this revenue procedure. Such an election pertains to an automatic extension of time under § 301.9100-1.

(1) Format of request. A § 301.9100-1 request (other than an election made pursuant to section 4 of Rev. Proc. 92-85) must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 8 of this revenue procedure. In addition, the § 301.9100-1 request must—

(a) include the information required by Rev. Proc. 92-85; and

(b) state whether the taxpayer's return covering the issue presented in the § 301.9100-1 request is being examined by a district director or whether the issues in the return are being considered by an appeals office.

(2) Statute of limitations. The running of any applicable period of limitations is not suspended for the period during which a § 301.9100-1 request has been filed. If the period of limitations on assessment under § 6501(a) for the year for which a timely filed election would have been made or for any affected succeeding year will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* section 5.02(2) of Rev. Proc. 92-85. Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100-1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations on assessment. *See* section 8.02 of Rev. Proc. 92-85.

(3) Taxpayer must notify national office if examination of return begins while request is pending. If an examination of any return covering the issue presented in the § 301.9100-1 request is started while a § 301.9100-1 request is pending, the taxpayer must notify the national office. *See* section 8.04 of this revenue procedure.

Request for extension of time for making an election or for other relief under § 301.9100-1 of the Procedure and Administration Regulations

(4) National office will notify district office or appeals office of § 301.9100-1 request if return is being examined or is being considered by an appeals office. If the taxpayer's return covering the issue presented in the § 301.9100-1 request is being examined by a district director or considered by an appeals office, the national office will notify the appropriate district office or appeals office that a § 301.9100-1 request has been submitted to the national office. The examining officer or the appeals officer is not authorized to deny consideration of a § 301.9100-1 request. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate district office or appeals office.

**Determinations under § 999(d)
of the Internal Revenue Code**

.03 Under Rev. Proc. 77-9, 1977-1 C.B. 542, the Office of Associate Chief Counsel (International) issues determinations under § 999(d) that may deny certain benefits of the foreign tax credit, deferral of earnings of foreign subsidiaries and domestic international sales corporations (DISCs), and tax exemption for foreign trade income of a foreign sales corporation or a small foreign sales corporation (FSC or small FSC) to a person, if that person, a member of a controlled group (within the meaning of § 993(a)(3)) that includes the person, or a foreign corporation of which a member of the controlled group is a United States shareholder, agrees to participate in, or cooperate with, an international boycott. Requests for determinations under Rev. Proc. 77-9 are letter ruling requests and, therefore, should be submitted to the Associate Chief Counsel (International) pursuant to this revenue procedure.

In matters involving § 367

.04 Unless the issue is covered by section 7 of this revenue procedure, the Office of Associate Chief Counsel (International) may issue a letter ruling under § 367 even if the taxpayer does not request a letter ruling as to the characterization of the transaction under the reorganization provisions of the Code. The Office of Associate Chief Counsel (International) will determine the § 367 consequences of a transaction based on the taxpayer's characterization of the transaction but will indicate in the letter ruling that it expresses no opinion as to the characterization of the transaction under the reorganization. However, the Office of Associate Chief Counsel (International) may decline to issue a § 367 ruling in situations in which the taxpayer inappropriately characterizes the transaction under the reorganization provisions.

In estate tax matters

.05 In general, the national office issues prospective letter rulings on transactions affecting the estate tax on the prospective estate of a living person and affecting the estate tax on the estate of a decedent before the decedent's estate tax return is filed. The national office will not issue letter rulings for prospective estates on computations of tax, actuarial factors, and factual matters.

If the taxpayer is requesting a letter ruling regarding a decedent's estate tax and the estate tax return is due to be filed before the letter ruling is expected to be issued, the taxpayer should obtain an extension of time for filing the return and should notify the national office branch considering the letter ruling request that an extension has been obtained.

If the return is filed before the letter ruling is received from the national office, the taxpayer must disclose on the return that a letter ruling has been requested, attach a copy of the pending letter ruling request to the return, and notify the national office that the return has been filed. *See* section 8.04 of this revenue procedure. The national office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

If the letter ruling cannot be issued within that 3-month period, the national office will notify the district director having jurisdiction over the return, who may, by memorandum to the national office, grant an additional period for the issuance of the letter ruling.

**In matters involving additional
estate tax under § 2032A(c)**

.06 In matters involving additional estate tax under § 2032A(c), the national office issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

**In matters involving qualified
domestic trusts under § 2056A**

.07 In matters involving qualified domestic trusts under § 2056A, the national office issues letter rulings on proposed transactions and on completed transactions that occurred before the return is filed.

**In generation-skipping transfer
tax matters**

.08 In general, the national office issues letter rulings on proposed transactions that affect the generation-skipping transfer tax and on completed transactions that occurred before the return is filed. In the case of a generation-skipping trust or trust equivalent,

letter rulings are issued either before or after the trust or trust equivalent has been established. The national office will issue letter rulings on the application of the effective date rules for generation-skipping transfer tax (§ 1433 of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 648) to wills, trusts, and trust equivalents in existence on October 22, 1986, and to generation-skipping transfers taking place on or before October 22, 1986.

In employment and excise tax matters

.09 In employment and excise tax matters, the national office issues letter rulings on proposed transactions and on completed transactions either before or after the return is filed for those transactions. Requests regarding employment status (employer/employee relationship) from federal agencies and instrumentalities should be submitted directly to the national office. Requests from other taxpayers must first be submitted to the taxpayer's district office. *See* section 6.04 of this revenue procedure. Generally, the employer is the taxpayer and requests the letter ruling. However, if the worker asks for the letter ruling, both the worker and the employer are considered to be the taxpayer and both are entitled to the letter ruling.

The national office usually will not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

- (1) is being examined by a district director;
- (2) is being considered by an appeals office;
- (3) is pending in litigation in a case involving the taxpayer or a related taxpayer;
- (4) has been examined by a district director or considered by an appeals office and the statutory period of limitations has not expired for assessment or for filing a claim for refund or credit of tax; or
- (5) has been examined by a district director or considered by an appeals office and a closing agreement covering the issue or liability has not been entered into by a district director or by an appeals office.

If a return involving an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the national office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or an examination of the identical issue on an earlier year's return has been started by a district director. *See* section 8.04 of this revenue procedure. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the district director agrees, by memorandum, to the issuance of the letter ruling.

In administrative provisions matters

.10

(1) In general. The national office issues letter rulings on matters arising under the Code and related statutes and regulations that involve—

- (a) the time, place, manner, and procedures for reporting and paying taxes;
- (b) the assessment and collection of taxes (including interest and penalties);
- (c) the abatement, credit, or refund of an overassessment or overpayment of tax; or
- (d) the filing of information returns.

(2) Circumstances under which a letter ruling is not ordinarily issued. The national office ordinarily does not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue—

- (a) is being examined by a district director;
- (b) is being considered by an appeals office;
- (c) is pending in litigation in a case involving the taxpayer or a related taxpayer;
- (d) has been examined by a district director or considered by an appeals office and the statutory period of limitations has not expired for assessment or for filing a claim for refund or credit of tax; or
- (e) has been examined by a district director or considered by an appeals office and a closing agreement covering the issue or liability has not been entered into by a district director or appeals office.

If a return involving an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the national office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or an examination of the identical issue on an earlier year's return has been started by a district director. *See* section 8.04 of this revenue procedure. But, even if an examination has begun, the national office ordinarily will issue the letter ruling if the district director agrees, by memorandum, to the issuance of the letter ruling.

Generally not to business associations or groups

.11 The national office does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that would be appropriately addressed in revenue rulings. *See* Rev. Proc. 89-14, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The national office, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not to foreign governments

.12 The national office does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. The national office also does not issue letter rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country. *See* section 12.02 of Rev. Proc. 91-23, 1991-1 C.B. at 542. However, the national office will continue to exchange correspondence with treaty partners pursuant to the consultation provisions in tax treaties. In addition, the national office may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

Generally not on federal tax consequences of proposed legislation

.13 The national office does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. The national office, however, may provide general information in response to an inquiry.

Issuance of a letter ruling before the adoption of regulations

.14 Unless the issue is covered by section 7 of this revenue procedure, or by Rev. Proc. 96-3, this Bulletin, or Rev. Proc. 96-7, this Bulletin, a letter ruling may be issued before the adoption of regulations (either temporary or final) that interpret the provisions of any act under the following conditions:

(1) Answer is clear or is reasonably certain. If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

(2) Answer is not reasonably certain. The Service will consider all letter ruling requests and use its best efforts to issue a letter ruling even if the answer does not seem reasonably certain where the issuance of a letter ruling is in the best interests of tax administration.

(3) Issue cannot be readily resolved before regulations are issued. A letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before regulations are issued. However, when the Service has closed a regulations project that might have answered the issue or decides not to open a regulations project, the appropriate branch will consider all letter ruling requests unless the issue is covered by section 7 of this revenue procedure, or by Rev. Proc. 96-3 or Rev. Proc. 96-7.

SECTION 6. UNDER WHAT CIRCUMSTANCES DO DISTRICT DIRECTORS ISSUE DETERMINATION LETTERS?

District directors issue determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulation, or by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

In income and gift tax matters

.01 In income and gift tax matters, district directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return already filed.

Normally, district directors do not issue determination letters on the tax consequences of proposed transactions. However, a district director may issue a determination letter on the replacement, even though not yet made, of involuntarily converted property under § 1033, if the taxpayer has filed an income tax return for the year in which the property was involuntarily converted.

In estate tax matters

.02 In estate tax matters, district directors issue determination letters in response to written requests affecting the estate tax returns over which the district directors have examination jurisdiction. They do not issue determination letters on matters concerning the application of the estate tax to the prospective estate of a living person.

In generation-skipping transfer tax matters

.03 In generation-skipping transfer tax matters, district directors issue determination letters in response to written requests affecting the generation-skipping transfer tax returns over which the district directors have examination jurisdiction. They do not issue determination letters on matters concerning the application of the generation-skipping transfer tax before the distribution or termination takes place.

In employment and excise tax matters

.04 In employment and excise tax matters, district directors issue determination letters in response to written requests from taxpayers on completed transactions over which they have examination jurisdiction.

Requests for a determination of employment status (Form SS-8) from taxpayers (other than federal agencies and instrumentalities) must be submitted to the district office where the taxpayer resides and not directly to the national office. *See also* section 5.09 of this revenue procedure.

Circumstances under which determination letters are not issued by district director

.05 A district director will not issue a determination letter in response to any request if—

- (1) it appears that the taxpayer has directed a similar inquiry to the national office;
- (2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an appeals office;
- (3) the determination letter is requested by an industry, trade association, or similar group; or
- (4) the request involves an industry-wide problem.

Under no circumstances will a district director issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed and over which the district director has or will have examination jurisdiction.

A district director will not issue a determination letter on an employment tax question if the specific question for the same taxpayer or a related taxpayer has been or is being considered by the Central Office of the Social Security Administration or the Railroad Retirement Board. A district director also will not issue a determination letter on determining constructive sales price under § 4216(b) or § 4218(c), which deal with special provisions applicable to the manufacturer's excise tax. The national office, however, will issue letter rulings in this area. *See* sections 6.04 and 7.04 of this revenue procedure.

Requests concerning income, estate, or gift tax returns

.06 A request received by a district director on a question concerning an income, estate, or gift tax return already filed generally will be considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.07 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.08 Determination letters issued under sections 6.01 through 6.04 of this revenue procedure are not reviewed by the national office before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask the district director to reconsider the matter or to request technical advice from the national office as explained in Rev. Proc. 96-2, this Bulletin.

SECTION 7. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?

Ordinarily not in certain areas because of factual nature of the problem

.01 The Service ordinarily will not issue letter rulings or determination letters in certain areas because of the factual nature of the problem involved or because of other reasons. Rev. Proc. 96-3 and Rev. Proc. 96-7 provide a list of these areas. This list is not all-inclusive because the Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

Instead of issuing a letter ruling or determination letter, the national office or a district director may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Not on alternative plans or hypothetical situations

.02 A letter ruling or a determination letter will not be issued on alternative plans of proposed transactions or on hypothetical situations.

Ordinarily not on part of an integrated transaction

.03 The national office ordinarily will not issue a letter ruling on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the national office will issue a letter ruling on part of the transaction.

If two or more items or sub-methods of accounting are interrelated, the national office ordinarily will not issue a letter ruling on a change in accounting method involving only one of the items or sub-methods.

On constructive sales price under § 4216(b) or § 4218(c)

.04 The national office will issue letter rulings in all cases on the determination of a constructive sales price under § 4216(b) or § 4218(c) and in all other cases on prospective transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

SECTION 8. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

This section explains the general instructions for requesting letter rulings and determination letters on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee listed in Appendix A of this revenue procedure. For additional user fee requirements, see section 14 of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in section 9 of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.01

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties. (The term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization or all employees where a large number may be involved.);

(b) the annual accounting period, and the overall method of accounting (cash or accrual) for maintaining the accounting books and filing the federal income tax return, of all interested parties;

(c) the location of the district office that has or will have examination jurisdiction over the return (not the service center where the return is filed);

(d) a description of the taxpayer’s business operations;

(e) a complete statement of the business reasons for the transaction; and

(f) a detailed description of the transaction.

The Service will usually not rule on only one step of a larger integrated transaction. See section 7.03 of this revenue procedure. However, if such a letter ruling is requested, the facts, circumstances, true copies of relevant documents, etc., relating to the entire transaction must be submitted.

Documents

(2) Copies of all contracts, wills, deeds, agreements, instruments, and other documents. True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request. The taxpayer must also submit certified English translations of all applicable foreign laws and a copy of those laws with the request. For guidelines on the acceptability of such documents, see Rev. Rul. 67-308, 1967-2 C.B. 254.

Each document, other than the request, should be labelled and attached to the request in alphabetical sequence. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service's file and will not be returned.

If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should be submitted. If the request relates to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted.

Analysis of material facts

(3) Analysis of material facts. All material facts in documents must be included, rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

If the statement is affirmative, it must specify whether the issue—

- (a) is being examined by a district director;
- (b) has been examined, but the statutory period of limitations has not expired for either assessing tax or filing a claim for refund or credit of tax;
- (c) has been examined, but a closing agreement covering the issue or liability has not been entered into by a district director;
- (d) is being considered by an appeals office in connection with a return from an earlier period;
- (e) has been considered by an appeals office in connection with a return from an earlier period, but the statutory period of limitations has not expired for either assessing tax or filing a claim for refund or credit of tax;
- (f) has been considered by an appeals office in connection with a return from an earlier period, but a closing agreement covering the issue or liability has not been entered into by an appeals office; or
- (g) is pending in litigation in a case involving the taxpayer or a related taxpayer.

Same or similar issue previously submitted or currently pending

(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending. The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

- (a) the Service previously ruled on the same or a similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor;
- (b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or a similar issue to the Service but withdrew the request before a letter ruling or determination letter was issued;
- (c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Service; or
- (d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to the Service.

If the statement is affirmative for (a), (b), (c), or (d) of this section 8.01(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's consideration of the issue.

Statement of authorities supporting taxpayer's views

(6) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's views

(7) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures, or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(8) Statement identifying pending legislation. At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a letter ruling or determination letter is issued, the taxpayer must notify the Service.

Deletions statement required by § 6110

(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletions statement"). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 21 calendar days. See section 10.06 of this revenue procedure.

Format of deletions statement

(a) A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletions statements may be submitted.

Location of deletions statement

(b) The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

Signature

(c) The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

Additional information

(d) The taxpayer should follow the same procedures above to propose deletions from any additional information submitted after the initial request. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Taxpayer may protest deletions not made

(e) After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement within 20 calendar days to the Service office indicated on the notice of intention to disclose. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

Taxpayer may request delay of public inspection

(f) After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

Signature on request

(10) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

Authorized representatives

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be:

Attorney

(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(b) A certified public accountant who is duly qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(c) An enrolled agent who is a person, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230 (31 C.F.R. part 10 (1995));

Enrolled actuary

(d) An enrolled actuary who is a person, other than an attorney or certified public accountant, that is currently enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. § 1242 and who is not currently under suspension or disbarment from practice before the Service. He or she must file a

written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice before the Service as an enrolled actuary is limited to representation with respect to issues involving §§ 401, 403(a), 404, 405, 412, 413, 414, 4971, 6057, 6058, 6059, 6652(e), 6652(f), 6692, 7805(b), and involving 29 U.S.C. § 1083; or

A person with a “Letter of Authorization”

(e) Any other person, including a foreign representative, who has received a “Letter of Authorization” from the Director of Practice under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a “Letter of Authorization” to: Office of Director of Practice, HR:DP, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

Employee, general partner, bona fide officer, administrator, trustee, etc.

The above requirements do not apply to a regular full-time employee representing his or her employer, to a general partner representing his or her partnership, to a bona fide officer representing his or her corporation, association, or organized group, or to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(11)) who is not a full-time employee, general partner, bona fide officer, or an administrator, trustee, etc., may not represent a taxpayer in connection with a letter ruling or a determination letter. *See* section 10.7(c) of Treasury Department Circular No. 230.

Foreign representative

A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(11)) is not authorized to practice before the Service and, therefore, must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual’s or the entity’s own behalf or through a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 8.01(11).

Power of attorney and declaration of representative

(12) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501–509 (1995)), which provide the rules for representing a taxpayer before the Service. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative’s authorization (Part I of Form 2848, Power of Attorney) and the representative’s qualification (Part II of Form 2848, Declaration of Representative). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. For additional information regarding the power of attorney form, see section 8.02(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, see section 8.08 of this revenue procedure.

Penalties of perjury statement

(13) Penalties of perjury statement. A request for a letter ruling or determination letter and any factual information or change in the request submitted at a later time must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested letter ruling or determination letter are true, correct, and complete.”** A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

Signature by taxpayer

The declaration must be signed and dated by the taxpayer, not the taxpayer’s representative. A stamped signature is not permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust or partnership must be a trustee or general partner who has personal knowledge of the facts.

Number of copies of request to be submitted

(14) Number of copies of request to be submitted. Generally, a taxpayer needs only to submit one copy of the request for a letter ruling or determination letter. If, however, more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 8.02(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 8.01(9)(a) of this revenue procedure; or

(c) a closing agreement (as defined in section 2.02 of this revenue procedure) is being requested on the issue presented.

Sample of a letter ruling request

(15) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix B. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix B, the different format will not defer consideration of the letter ruling request.

Checklist

(16) Checklist for letter ruling requests. The Service will be able to respond more quickly to a taxpayer's letter ruling request if the request is carefully prepared and complete. The checklist in Appendix C of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix C must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix C is not received, a branch representative will ask the taxpayer or the taxpayer's representative to submit the checklist, which may delay action on the letter ruling request.

For letter ruling requests on certain matters, specific checklists supplement the checklist in Appendix C. These checklists are listed in section 9.01 of this revenue procedure and must also be completed and placed on top of the letter ruling request along with the checklist in Appendix C.

Copies of the checklist in Appendix C can be obtained by calling (202) 622-7560 (not a toll-free call). A photocopy of this checklist may be used.

Additional information required in certain circumstances

.02

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Service generally will issue a single letter ruling covering all the issues. However, if the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Service will usually comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request.

In issuing each letter ruling, the Service will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney

(2) To designate recipient of original or copy of letter ruling or determination letter. Unless the power of attorney provides otherwise, the Service will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative's authorization. See section 8.01(12) of this revenue procedure.

Copies of letter ruling or determination letter sent to multiple representatives

(a) To have copies sent to multiple representatives. When a taxpayer has more than one representative, the Service will send the copy of the letter ruling or determination letter to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or determination letter sent to the second representative listed in the power of attorney, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is to be sent to the second representative listed in the power of attorney. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

Original of letter ruling or determination letter sent to taxpayer's representative

(b) To have original sent to taxpayer's representative. A taxpayer may request that the original of the letter ruling or determination letter be sent to the taxpayer's representative. In this case, a copy of the letter ruling or determination letter will be sent to the taxpayer.

If the taxpayer wants the original of the letter ruling or determination letter sent to the taxpayer's representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that the original of the letter ruling or determination letter is to be sent to the taxpayer's representative. When a taxpayer has more than one representative, the Service will send the original of the letter ruling or determination letter to the first representative named in the most recent power of attorney.

No copy of letter ruling or determination letter sent to taxpayer's representative

(c) To have no copy sent to taxpayer's representative. If a taxpayer does not want a copy of the letter ruling or determination letter sent to any representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is not to be sent to any representative.

"Two-Part" letter ruling requests

(3) To request a particular conclusion on a proposed transaction. A taxpayer who is requesting a particular conclusion on a proposed transaction may make the request for a letter ruling in two parts. This type of request is referred to as a "two-part letter ruling request." The first part must include the complete statement of facts and related documents described in section 8.01 of this revenue procedure. The second part must include a summary statement of the facts the taxpayer believes to be controlling in reaching the conclusion requested.

If the Service accepts the taxpayer's statement of controlling facts, it will base its letter ruling on these facts. Ordinarily, this statement will be incorporated into the letter ruling. However, the Service reserves the right to rule on the basis of a more complete statement of the facts and to seek more information in developing the facts and restating them.

A taxpayer who chooses this two-part procedure has all the rights and responsibilities provided in this revenue procedure.

Taxpayers may not use the two-part procedure if it is inconsistent with other procedures, such as those dealing with requests for permission to change accounting methods or periods, applications for recognition of exempt status under § 521, or rulings on employment tax status.

After the Service has resolved the issues presented by a letter ruling request, the Service representative may request that the taxpayer submit a proposed draft of the letter ruling to expedite the issuance of the ruling. *See* section 10.16 of this revenue procedure.

Expeditious handling

(4) To request expeditious handling. The Service processes requests for letter rulings and determination letters in order of the date received and as expeditiously as possible. A taxpayer who has a compelling need to have a request processed ahead of the regular order must request expeditious handling. This request must explain the need for expeditious handling.

The request for expeditious handling must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. If the request for expeditious handling is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: "**Expeditious Handling Is Requested. See page — of this letter.**"

A request for expeditious handling will not be forwarded to a rulings branch for action until the check for the user fee is received.

The Service cannot give assurance that any letter ruling or determination letter will be processed by the time requested. For example, the scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order. Accordingly, the Service urges taxpayers to submit their requests well in advance of the contemplated transaction.

Facsimile (fax) transmission

(5) To receive a letter ruling or submit a request for a letter ruling by facsimile transmission. A letter ruling ordinarily is not sent by facsimile (fax) transmission. However, if the taxpayer requests, a copy of a letter ruling may be faxed to the taxpayer or the taxpayer's authorized representative. A letter ruling, however, is not issued until the ruling is mailed. *See* § 301.6110-2(h) of the Income Tax Regulations.

A request to fax a copy of the letter ruling to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling request or prior to the approval of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

In addition, because of the nature of a fax transmission, a statement containing a waiver of any disclosure violations resulting from the fax transmission must accompany the request. Nevertheless, the national office will take certain precautions to protect confidential information. For example, the national office will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted and that contains a statement prohibiting unauthorized disclosure of the letter ruling if a recipient of the faxed letter ruling is not the intended recipient of the fax. The letter ruling will be faxed by the Communications Unit of the Technical Services Staff (CC:DOM:CORP:T:C).

Original letter ruling requests by fax are discouraged because such requests must be treated in the same manner as requests by letter. For example, the faxed letter ruling request will not be forwarded to the rulings branch for action until the check for the user fee is received.

This section does not apply to the high volume requests submitted by taxpayers for a change in accounting method or a change in accounting period.

Requesting a conference

(6) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 10.08, 10.09, and 11.11(2) of this revenue procedure.

Address to send the request

.03

Requests for letter rulings

(1) Requests for letter rulings should be sent to the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, at the following address:

Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

The package should be marked: RULING REQUEST SUBMISSION. Requests may also be hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Avenue, N.W., Washington, DC. No receipt will be given at the drop box.

Requests for determination letters

(2) Requests for determination letters should be sent to the district director whose office has or will have examination jurisdiction over the taxpayer's return. For fees required with determination letter requests, see section 14 and Appendix A of this revenue procedure.

Pending letter ruling requests

.04

Circumstances under which the taxpayer must notify the national office

The taxpayer must notify the national office if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

- (1) an examination of the issue or the identical issue on an earlier year's return has been started by a district director;
- (2) in the case of a § 301.9100–1 request, an examination of any return covering the issue presented in the § 301.9100–1 request has been started by a district director. *See* section 5.02(3) of this revenue procedure; or
- (3) legislation that may affect the transaction is introduced. *See* section 8.01(8) of this revenue procedure.

Must notify national office if return is filed and must attach request to return

In addition, if the taxpayer files a return before a letter ruling is received from the national office concerning the issue, the taxpayer must notify the national office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the district office and thereby avoid premature district action on the issue.

This section also applies to pending requests for a closing agreement on a transaction for which a letter ruling is not requested or issued, and for an advance pricing agreement.

When to attach letter ruling to return

.05

A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed.

How to check on status of request

.06

The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request or the appropriate branch representative who contacts the taxpayer as explained in section 10.02 of this revenue procedure.

Request may be withdrawn or national office may decline to issue letter ruling

.07

If a taxpayer withdraws a request for a letter ruling or if the national office declines to issue a letter ruling, the national office will notify the appropriate district director and may give its views on the issues in the request to the appropriate district director to consider in any later examination of the return. The taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the national office declines to issue a letter ruling will not be returned to the taxpayer. *See* section 8.01(2) of this revenue procedure. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.

The user fee will not be returned for a letter ruling request that is withdrawn. If the national office declines to issue a letter ruling on all of the issues in the request, the user fee will be returned. If the national office, however, issues a letter ruling on some, but not all, of the issues, the user fee will not be returned. *See* section 14.09 of this revenue procedure for additional information regarding refunds of user fees.

Compliance with Treasury Department Circular No. 230

.08

The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations when the national office believes that the taxpayer's representative is not in compliance with Circular No. 230, the national office will bring the matter to the attention of the Director of Practice.

For the requirement regarding compliance with the conference and practice requirements, see section 8.01(12) of this revenue procedure.

SECTION 9. WHAT OTHER CHECKLISTS, GUIDELINE REVENUE PROCEDURES, SAFE HARBOR REVENUE PROCEDURES, AND AUTOMATIC CHANGE REVENUE PROCEDURES AND NOTICES APPLY TO CERTAIN REQUESTS?

Checklists and guideline revenue procedures

CODE OR REGULATION SECTION

103, 141–150, 7478, and 7871
Issuance of state or local obligations

1.166–2(d)(3)
Uniform express determination letter for making election

Subchapter C—
Corporate Distributions and Adjustments

301
Nonapplicability on sales of stock of employer to defined contribution plan

302, 311
Checklist questionnaire

302(b)(4)
Checklist questionnaire

331
Checklist questionnaire

332
Checklist questionnaire

351
Checklist questionnaire

355
Checklist questionnaire

368(a)(1)(E)
Checklist questionnaire

482
Advance pricing agreements

Specific revenue procedures and notices supplement the general instructions for requests explained in section 8 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.

.01 For requests relating to the following Code sections and subject matters, see the following checklists and guideline revenue procedures.

REVENUE PROCEDURE

Rev. Proc. 88–32, 1988–1 C.B. 833 (for issuers); Rev. Proc. 88–33, 1988–1 C.B. 835 (for nonissuing parties and for outstanding obligations); Rev. Proc. 88–31, 1988–1 C.B. 832 (for approval of areas of chronic economic distress); and Rev. Proc. 82–26, 1982–1 C.B. 476 (for “on behalf of” and similar issuers). For approval of areas of chronic economic distress, Rev. Proc. 88–31 explains how this approval must be submitted to the Assistant Secretary for Housing/Federal Housing Commissioner of the Department of Housing and Urban Development.

Rev. Proc. 92–84, 1992–2 C.B. 489.

Rev. Proc. 77–37, 1977–2 C.B. 568, as modified by Rev. Proc. 89–30, 1989–1 C.B. 895, and as amplified by Rev. Proc. 77–41, 1977–2 C.B. 574, Rev. Proc. 83–81, 1983–2 C.B. 598 (see also Rev. Proc. 96–3), Rev. Proc. 84–42, 1984–1 C.B. 521 (superseded as to no-rule areas by Rev. Proc. 85–22, 1985–1 C.B. 550), Rev. Proc. 86–42, 1986–2 C.B. 722, and Rev. Proc. 89–50, 1989–2 C.B. 631. But see Rev. Proc. 96–3, section 3.01(24) (mergers or consolidations under § 368(a)(1)(A)), section 3.01(25) (stock acquisitions under § 368(a)(1)(B)), and section 3.01(28) (corporate changes under § 368(a)(1)(F)), which describe certain corporate reorganizations where the Service will not issue advance letter rulings or determination letters.

Rev. Proc. 87–22, 1987–1 C.B. 718.

Rev. Proc. 86–18, 1986–1 C.B. 551; and Rev. Proc. 77–41, 1977–2 C.B. 574.

Rev. Proc. 81–42, 1981–2 C.B. 611.

Rev. Proc. 86–16, 1986–1 C.B. 546.

Rev. Proc. 90–52, 1990–2 C.B. 626.

Rev. Proc. 83–59, 1983–2 C.B. 575. But see section 3.01(22) of Rev. Proc. 96–3, which describes certain transfers to controlled corporations where the Service will not issue advance letter rulings or determination letters.

Rev. Proc. 86–41, 1986–2 C.B. 716, as modified by Rev. Proc. 91–62, 1991–2 C.B. 864, and Rev. Proc. 91–63, 1991–2 C.B. 865. But see section 3.01(23) of Rev. Proc. 96–3, which describes certain circumstances under which the Service will not issue advance letter rulings or determination letters as to whether the corporate business purpose requirement of § 1.355–2(b) is satisfied.

Rev. Proc. 81–60, 1981–2 C.B. 680. But see section 3.01(27) of Rev. Proc. 96–3, which describes circumstances under which the Service will not issue advance letter rulings or determination letters as to whether a transaction constitutes a corporate recapitalization within the meaning of § 368(a)(1)(E) (or a transaction that also qualifies under § 1036).

Rev. Proc. 91–22, 1991–1 C.B. 526, as corrected by Rev. Proc. 91–22A, 1991–1 C.B. 534, and as modified by Rev. Proc. 96–1 (this revenue procedure) and Rev. Proc. 96–8.

521 Appeal procedure with regard to adverse determination letters and revocation or modification of exemption letter rulings and determination letters	Rev. Proc. 90–27, 1990–1 C.B. 514, as modified by Rev. Proc. 96–8.
1.817–5(a)(2) Issuer of a variable contract requesting relief	Rev. Proc. 92–25, 1992–1 C.B. 741.
1.1502–75(c)(2)(i) Consent to discontinue filing consolidated returns	Rev. Proc. 95–39, 1995–35 I.R.B. 17 (certain consolidated groups may submit an application requesting consent to discontinue filing consolidated returns; this application must be filed on or before June 30, 1996).
1.1502–76(a)(1) Consent to file a consolidated return where member(s) of the affiliated group use a 52–53 week taxable year	Rev. Proc. 89–56, 1989–2 C.B. 643.
1504(a)(3)(A) and (B) Waiver of application of § 1504(a)(3)(A) for certain corporations	Rev. Proc. 91–71, 1991–2 C.B. 900.
1552 Consent to elect or change method of allocating affiliated group’s consolidated federal income tax liability	Rev. Proc. 90–39, 1990–2 C.B. 365, as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367.
4980B	Rev. Proc. 87–28, 1987–1 C.B. 770 (treating references to former § 162(k) as if they were references to § 4980B).
301.9100–1 Granting extensions for making elections	Rev. Proc. 92–85, 1992–2 C.B. 490, as modified by Rev. Proc. 96–1 (this revenue procedure), and Rev. Proc. 93–28, 1993–2 C.B. 344; and Rev. Proc. 92–20, 1992–1 C.B. 685, as modified by Rev. Proc. 96–1 (this revenue procedure), Rev. Proc. 96–8, Rev. Proc. 92–90, 1992–2 C.B. 501, and Rev. Proc. 92–85. <i>See also</i> section 5.02 of this revenue procedure and section 5 of Rev. Proc. 96–2.
<i>SUBJECT MATTERS</i>	
Accounting methods	<i>REVENUE PROCEDURE</i> Rev. Proc. 92–20, 1992–1 C.B. 685, as modified by Rev. Proc. 96–1 (this revenue procedure), Rev. Proc. 96–8, Rev. Proc. 92–90, and Rev. Proc. 92–85; and Rev. Proc. 96–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.01(2), 3.01(3), 3.01(4), 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(7), 8.01(8), 8.01(11), 8.01(12), 8.02(2), 8.02(4), 8.02(6), 8.03(1), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07(1), 10.07(2), 10.08, 10.09, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.17, 11, 14, and Appendix A are applicable.
Accounting periods; adopt, retain or change for partnership, S corporation, and personal service corporation	Rev. Proc. 87–32, 1987–2 C.B. 396, as modified by Rev. Proc. 92–85; and Rev. Proc. 96–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.01(3), 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(7), 8.01(8), 8.01(11), 8.01(12), 8.02(2), 8.02(4), 8.02(6), 8.03(1) (only for Forms 1128 filed under section 6.01 of Rev. Proc. 87–32), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07(1), 10.07(2), 10.08, 10.09, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.17, 11, 14, and Appendix A are applicable.
Accounting periods; changes in period	Rev. Proc. 92–13, 1992–1 C.B. 665, as modified and amplified by Rev. Proc. 92–13A, 1992–1 C.B. 668, and as modified by Rev. Proc. 94–12, 1994–1 C.B. 565; and Rev. Proc. 96–1 (this revenue procedure) for which sections 1, 2.01, 2.02, 2.06, 3.01(3), 5.02, 5.12, 5.14, 7.01, 7.02, 7.03, 8.01(1), 8.01(2), 8.01(3), 8.01(4), 8.01(5), 8.01(6), 8.01(7), 8.01(8), 8.01(11), 8.01(12), 8.02(2), 8.02(4), 8.02(6), 8.03(1), 8.04, 8.05, 8.06, 8.07, 8.08, 9, 10.01, 10.04, 10.05, 10.07(1), 10.07(2), 10.08, 10.09, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.17, 11, 14, and Appendix A are applicable.
Classification of an organization as a partnership	Rev. Proc. 92–35, 1992–1 C.B. 790, as amplified by Rev. Proc. 94–46, 1994–2 C.B. 688; Rev. Proc. 89–12, 1989–1 C.B. 798, as supplemented by Rev. Proc. 92–33, 1992–1 C.B. 782, as modified by Rev. Proc. 95–10, 1995–1 C.B. 501, and as amplified by Rev. Proc. 94–46 and Rev. Proc. 91–13, 1991–1 C.B. 477 (checklist questionnaire); and Rev. Proc. 86–12, 1986–1 C.B. 534.

Classification of a limited liability company as a partnership	Rev. Proc. 95–10, 1995–1 C.B. 501.
Classification of liquidating trusts	Rev. Proc. 82–58, 1982–2 C.B. 847, as modified and amplified by Rev. Proc. 94–45, 1994–2 C.B. 684, and as amplified by Rev. Proc. 91–15, 1991–1 C.B. 484 (checklist questionnaire), as modified and amplified by Rev. Proc. 94–45.
Earnings and profits determinations	Rev. Proc. 75–17, 1975–1 C.B. 677; and Rev. Proc. 96–1 (this revenue procedure) for which sections 2.06, 3.01(3), 8, 10.04, 10.06, and 10.12 are applicable.
Estate, gift, and generation-skipping transfer tax issues	Rev. Proc. 91–14, 1991–1 C.B. 482 (checklist questionnaire).
Deferred intercompany transactions; election not to defer gain or loss	Rev. Proc. 82–36, 1982–1 C.B. 490.
Leveraged leasing	Rev. Proc. 75–21, 1975–1 C.B. 715, as modified by Rev. Proc. 76–30, 1976–2 C.B. 647, Rev. Proc. 79–48, 1979–2 C.B. 529, and Rev. Proc. 81–71, 1981–2 C.B. 731; and Rev. Proc. 75–28, 1975–1 C.B. 752, as modified by Rev. Proc. 79–48 and Rev. Proc. 81–71.
Rate orders; regulatory agency; normalization	<p>A letter ruling request that involves a question of whether a rate order that is proposed or issued by a regulatory agency will meet the normalization requirements of § 168(f)(2) (pre-Tax Reform Act of 1986, § 168(e)(3)) and former §§ 46(f) and 167(l) ordinarily will not be considered unless the taxpayer states in the letter ruling request whether—</p> <p>(1) the regulatory authority responsible for establishing or approving the taxpayer’s rates has reviewed the request and believes that the request is adequate and complete; and</p> <p>(2) the taxpayer will permit the regulatory authority to participate in any national office conference concerning the request.</p> <p>If the taxpayer or the regulatory authority informs a consumer advocate of the request for a letter ruling and the advocate wishes to communicate with the Service regarding the request, any such communication should be sent to: Internal Revenue Service, Associate Chief Counsel (Domestic), Attention CC:DOM:CORP:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. These communications will be treated as third party contacts for purposes of § 6110.</p>
Unfunded deferred compensation	Rev. Proc. 71–19, 1971–1 C.B. 698, as amplified by Rev. Proc. 92–65, 1992–2 C.B. 428. See Rev. Proc. 92–64, 1992–2 C.B. 422, for the model trust for use in Rabbi Trust Arrangements.
Safe harbor revenue procedures	.02 For requests relating to the following Code sections and subject matters, see the following safe harbor revenue procedures.
<i>CODE OR REGULATION SECTION</i>	<i>REVENUE PROCEDURE</i>
103 and 141–150 Issuance of state or local obligations	Rev. Proc. 93–17, 1993–1 C.B. 507 (changes of use of proceeds); and Rev. Proc. 93–19, 1993–1 C.B. 526 (management contracts).
280B Certain structural modifications to a building not treated as a demolition	Rev. Proc. 95–27, 1995–1 C.B. 704.
355(a)(1)(B) Transaction not violating the device test	Rev. Proc. 91–63, 1991–2 C.B. 865.
584(a) Qualification of a proposed common trust fund plan	Rev. Proc. 92–51, 1992–1 C.B. 988.
642(c)(5) Qualification of trusts as pooled income funds	Rev. Proc. 88–53, 1988–2 C.B. 712.

664(d)(1) Qualification of trusts as charitable remainder annuity trusts	Rev. Proc. 89–21, 1989–1 C.B. 842, as amplified by Rev. Proc. 90–32, 1990–1 C.B. 546.
664(d)(2) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 89–20, 1989–1 C.B. 841, as amplified by Rev. Proc. 90–30, 1990–1 C.B. 534.
664(d)(2) and (3) Qualification of trusts as charitable remainder unitrusts	Rev. Proc. 90–31, 1990–1 C.B. 539.
1286 Determination of reasonable compensation under mortgage service contracts	Rev. Proc. 91–50, 1991–2 C.B. 778.
1362(f) Automatic inadvertent termination relief to certain corporations	Rev. Proc. 94–23, 1994–1 C.B. 609.
301.7701–2 Classification of limited partnerships as partnerships	Rev. Proc. 92–88, 1992–2 C.B. 496.
301.7701–2(b)(1) Majority in interest	Rev. Proc. 94–46, 1994–2 C.B. 688.
1.7704–2(d) New business activity of existing partnership is closely related to pre-existing business	Rev. Proc. 92–101, 1992–2 C.B. 579.

SUBJECT MATTERS

Certain rent-to-own contracts treated as leases

Automatic change revenue procedures and notices

CODE SECTION

442
Changes in accounting periods

446
Changes in accounting methods

REVENUE PROCEDURE

Rev. Proc. 95–38, 1995–34 I.R.B. 25.

.03 For requests to change an accounting period or accounting method, see the following automatic change revenue procedures and notices published and in effect as of December 31, 1995. A taxpayer complying timely with an automatic change revenue procedure or notice will be deemed to have obtained the consent of the Commissioner to change the taxpayer’s accounting period or accounting method, as applicable.

REVENUE PROCEDURE

The automatic change revenue procedures for obtaining a change in annual accounting period include: Rev. Proc. 92–13, 1992–1 C.B. 665, as modified by Rev. Proc. 94–12, 1994–1 C.B. 565, and as modified and amplified by Rev. Proc. 92–13A, 1992–1 C.B. 668 (certain corporations that have not changed their accounting period within the prior 6 calendar years or other specified time); Rev. Proc. 87–32, 1987–2 C.B. 396, as modified by Rev. Proc. 92–85 (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year); Rev. Proc. 68–41, 1968–2 C.B. 943, as modified by Rev. Proc. 81–40, 1981–2 C.B. 604 (trusts held by certain fiduciaries needing a workload spread); and Rev. Proc. 66–50, 1966–2 C.B. 1260, as modified by Rev. Proc. 81–40 (individual seeking a calendar year).

The automatic change revenue procedures and notices for obtaining a change in method of accounting include: Notice 95–57, 1995–45 I.R.B. 12 (cash method banks in the Eighth Circuit seeking to change to the cash method of accounting for stated interest on short-term loans made in the ordinary course of business); Rev. Proc. 95–33, 1995–28 I.R.B. 7 (certain small resellers, formerly small resellers, or reseller-producers seeking to change their method of accounting for costs subject to § 263A); Rev. Proc. 95–25, 1995–1 C.B. 701 (certain taxpayers seeking to elect a historic absorption ratio under § 263A for their first, second, or third taxable year beginning on or after January 1, 1994); Rev. Proc. 95–19, 1995–1 C.B. 664 (taxpayers seeking to change certain methods of accounting for interest costs subject to § 263A(f) for their first or second taxable year beginning on or after January 1, 1994); Rev. Proc. 94–49, 1994–2 C.B. 705, as modified by Rev. Proc. 95–33 (certain taxpayers seeking to com-

ply with the final regulations under § 263A; Rev. Proc. 94-49 generally applies to a taxpayer's first taxable year beginning on or after January 1, 1994); Rev. Proc. 94-30, 1994-1 C.B. 621 (certain taxpayers seeking to change method for original issue discount for loans acquired before the applicable cut-off dates in Rev. Proc. 94-29 and Rev. Proc. 94-28); Rev. Proc. 94-29, 1994-1 C.B. 616 (certain taxpayers seeking to change to the principal-reduction method for loans acquired on or after a certain cut-off date); Rev. Proc. 94-28, 1994-1 C.B. 614 (certain taxpayers seeking to comply with the final regulations dealing with original issue discount for loans acquired on or after a certain cut-off date); Rev. Proc. 93-48, 1993-2 C.B. 580 (certain taxpayers required to change method of accounting for notional principal contracts entered into after December 12, 1993); Rev. Proc. 93-13, 1993-1 C.B. 482 (certain taxpayers required to change method for deducting amounts owed to related foreign persons in order to comply with § 267(a)(3)); Rev. Proc. 92-98, 1992-2 C.B. 512 (certain accrual method taxpayers selling multi-year service warranty contracts seeking to elect the service warranty income method); Rev. Proc. 92-75, 1992-2 C.B. 448 (certain taxpayers, other than those required to use inventories, seeking to change to an accrual method); Rev. Proc. 92-74, 1992-2 C.B. 442 (certain taxpayers, required to use inventories, seeking to change to an accrual method); Rev. Proc. 92-67, 1992-2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a constant interest rate election or seeking to make or revoke an election under § 1278(b)); Rev. Proc. 92-29, 1992-1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for the inclusion of common improvement costs in basis); Rev. Proc. 91-51, 1991-2 C.B. 779 (certain taxpayers that sell mortgages and retain rights to service the mortgages); Rev. Proc. 91-49, 1991-2 C.B. 777 (holders of certain mortgages that are stripped bonds); Rev. Proc. 91-31, 1991-1 C.B. 566 (certain utilities holding customer deposits); Rev. Proc. 90-63, 1990-2 C.B. 664 (certain taxpayers changing their accounting treatment of package design costs); Rev. Proc. 90-37, 1990-2 C.B. 361 (certain taxpayers with interest income from short-term loans); Rev. Proc. 89-46, 1989-2 C.B. 597 (cash basis taxpayers with certain United States savings bonds); Rev. Proc. 88-15, 1988-1 C.B. 683 (certain taxpayers seeking to discontinue LIFO inventory method); Rev. Proc. 85-8, 1985-1 C.B. 495 (certain taxpayers seeking to change from specific charge-off method to reserve method for bad debts); Rev. Proc. 84-76, 1984-2 C.B. 751 (taxpayers seeking to treat prepaid subscription income under the provisions of § 455); Rev. Proc. 84-30, 1984-1 C.B. 482 (taxpayers who used the Rule of 78's for interest on consumer loans); Rev. Proc. 84-29, 1984-1 C.B. 480 (individual borrowers who reported interest deductions in accordance with the Rule of 78's); and Rev. Proc. 74-11, 1974-1 C.B. 420 (taxpayers seeking to change their method of depreciation accounting for property subject to § 167).

SECTION 10. HOW DOES THE NATIONAL OFFICE HANDLE LETTER RULING REQUESTS?

The national office will issue letter rulings on the matters and under the circumstances explained in sections 3 and 5 of this revenue procedure and in the manner explained in this section.

Controls request and refers it to appropriate Assistant Chief Counsel or to the Office of Associate Chief Counsel (International)

.01 All requests for letter rulings will be controlled by the Technical Services Staff of the Assistant Chief Counsel (Corporate) (CC:DOM:CORP:T). That office will examine the incoming documents for completeness, process the user fee, and forward the file to the appropriate Assistant Chief Counsel or, for letter ruling requests under the jurisdiction of the Associate Chief Counsel (International), to the Office of Associate Chief Counsel (International). The Assistant Chief Counsel's office or the Office of Associate Chief Counsel (International), as appropriate, will assign the letter ruling request to one of its branches.

Branch representative contacts taxpayer within 21 days

.02 Within 21 calendar days after a letter ruling request has been received in the branch having jurisdiction, a representative of the branch will discuss the procedural issues in the letter ruling request with the taxpayer or, if the request includes a properly executed power of attorney, with the authorized representative unless the power of attorney provides otherwise. If the case is complex or a number of issues are involved, it may not be possible for the branch representative to discuss the substantive issues during this initial contact. However, when possible, for each issue within the branch's jurisdiction, the branch representative will tell the taxpayer—

(1) whether the branch representative will recommend that the Service rule as the taxpayer requested, rule adversely on the matter, or not rule;

(2) whether the taxpayer should submit additional information to enable the Service to rule on the matter; or

(3) whether, because of the nature of the transaction or the issue presented, a tentative conclusion on the issue cannot be reached.

Except for cases involving a request for change in accounting method or accounting period, the 21 calendar day procedure applies to: all matters within the jurisdiction of the Assistant Chief Counsel (Corporate), the Assistant Chief Counsel (Income Tax and Accounting), the Assistant Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International); and all matters within the jurisdiction of the Assistant Chief Counsel (Financial Institutions and Products), except cases concerning insurance issues requiring actuarial computations.

Notifies taxpayer if any issues have been referred to other branches

.03 If the letter ruling request involves matters within the jurisdiction of more than one branch, a representative of the branch that received the request will tell the taxpayer within the initial 21 days—

(1) that the matters within the jurisdiction of another branch have been referred to that branch for consideration; and

(2) that a representative of that branch will contact the taxpayer within 21 calendar days after receiving the referral to discuss informally the procedural and, to the extent possible, the substantive issues in the request.

Determines if transaction can be modified to obtain favorable letter ruling

.04 If a less than fully favorable letter ruling is indicated, the branch representative will tell the taxpayer whether minor changes in the transaction or adherence to certain published positions would bring about a favorable ruling. The branch representative may also tell the taxpayer the facts that must be furnished in a document to comply with Service requirements. However, the branch representative will not suggest precise changes that would materially alter the form of the proposed transaction or materially alter a taxpayer's proposed accounting method or accounting period.

If, at the end of this discussion, the branch representative determines that a meeting in the national office would be more helpful to develop or exchange information, a meeting will be offered and an early meeting date arranged. When offered, this meeting is in addition to the taxpayer's conference of right that is described in section 10.09 of this revenue procedure.

Is not bound by informal opinion expressed

.05 The Service will not be bound by the informal opinion expressed by the branch representative or any other authorized Service representative, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Tells taxpayer if request lacks essential information during initial contact

.06 If a request for a letter ruling or determination letter does not comply with all the provisions of this revenue procedure, the branch representative will tell the taxpayer during the initial contact which requirements have not been met.

Information must be submitted within 21 calendar days

(1) If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the branch representative will tell the taxpayer during the initial contact that the request will be closed if the Service does not receive the information within 21 calendar days unless an extension of time is granted. See sections 10.07(1) and (2) of this revenue procedure for instructions on submissions of additional information.

21-day period will be extended if justified and approved

(2) An extension of the 21-day period will be granted only if justified in writing by the taxpayer and approved by the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned. A request for extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the national office within the 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

Letter ruling request closed if the taxpayer does not submit information

(3) If the taxpayer does not submit the information requested during the initial contact within the time provided, the letter ruling request will be closed and the taxpayer will be notified in writing. If the information is received after the request is closed, the request will be reopened and treated as a new request as of the date the information is received. However, the taxpayer must pay another user fee before the case can be reopened.

Letter ruling request mistakenly sent to district director

(4) A request for a letter ruling sent to the district director that does not comply with the provisions of this revenue procedure will be returned by the district director so that the taxpayer can make corrections before sending it to the national office.

Requires prompt submission of additional information requested after initial contact

.07

(1) Material facts furnished to the Service by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Service with a declaration that the information is provided under penalties of perjury in the form described in section 8.01(13) of this revenue procedure. This confirmation and any additional information requested by the Service that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Service representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and a signed perjury statement, however, must be mailed or delivered to the Service.

Address to send additional information

(2) Additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and room number of the Service representative who requested the information]
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

However, for cases involving a request for change in accounting method or period under the jurisdiction of the Assistant Chief Counsel (Income Tax and Accounting), and a request for an extension of time under § 301.9100-1 on such cases, the additional information should be sent to:

Internal Revenue Service
ADDITIONAL INFORMATION
Attn: [Name, office symbols, and room number of the Service representative who requested the information]
P.O. Box 14095
Ben Franklin Station
Washington, DC 20044

For all cases, the additional information should include the name, office symbols, and room number of the Service representative who requested the information, and the taxpayer's name and the case control number, which the Service representative can provide.

21-day period will be extended if justified and approved

(3) An extension of the 21-day period will be granted only if justified in writing by the taxpayer and approved by the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned. A request for extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the national office within the 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and

later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

(4) If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand or, if appropriate, no letter ruling will be issued. When the Service decides not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. **If the Service receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer must pay another user fee before the case can be reopened.**

.08 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the national office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in section 8.02(6) of this revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the request for extension are the same as those explained in section 10.07(3) of this revenue procedure regarding providing additional information.

.09 A taxpayer is entitled, as a matter of right, to only one conference in the national office, except as explained under section 10.12 of this revenue procedure. This conference normally will be held at the branch level and will be attended by a person who, at the time of the conference, has the authority to sign the letter ruling in his or her own name or for the branch chief.

When more than one branch has taken an adverse position on an issue in a letter ruling request or when the position ultimately adopted by one branch will affect that adopted by another, a representative from each branch with the authority to sign in his or her own name or for the branch chief will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a branch to an assistant chief counsel or to any other official of the Service. But see section 10.12 of this revenue procedure for situations in which the Service may offer additional conferences.

In employment tax matters, only the party entitled to the letter ruling is entitled to a conference. *See* section 5.09 of this revenue procedure.

.10 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

.11 The senior Service representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. A Service representative explains the Service's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Service to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, a Service representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Service representatives will not make a commitment regarding the conclusion that the Service will finally adopt.

.12 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level

If taxpayer does not submit additional information

Schedules a conference if requested by taxpayer

Permits taxpayer one conference of right

Disallows verbatim recording of conferences

Makes tentative recommendations on substantive issues

May offer additional conferences

with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Service from offering additional conferences, including conferences with an official higher than the branch level, if the Service decides they are needed. Such conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.13 The taxpayer should furnish to the national office any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. See section 10.07 of this revenue procedure for instructions on submission of additional information. If the additional information is not received within that time, a letter ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the requested extension are the same as those stated in section 10.07(3) of this revenue procedure regarding submitting additional information.

May schedule pre-submission conference

.14 Sometimes it will be advantageous to both the Service and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. Such conferences are held only when the taxpayer actually intends to make a request and only on a time-available basis. Generally, the taxpayer will be asked to provide a draft of the letter ruling request or other detailed written description of the proposed transaction before the pre-submission conference.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference.

May, under limited circumstances, schedule a conference to be held by telephone

.15 Infrequently, taxpayers request that their conference of right be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

May request draft of proposed letter ruling near the completion of the ruling process

.16 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Service representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling to receive a letter ruling.

The format of the submission should be discussed with the Service representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to include.

Taxpayer may also submit draft on a word processing disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a disk in a word processing format. The typed draft will become part of the permanent files of the national office, and the word processing disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the format of the word processing disk, the questions can be directed to Wayne Thomas at 202-622-7560 or Roberta Hardaker at 202-622-3563 (not toll-free calls).

The proposed letter ruling (both typed draft and word processing disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 10.07 of this revenue procedure.

.17 Generally, before the letter ruling is issued, the branch representative will inform the taxpayer or the taxpayer's representative of the Service's conclusions. If the Service is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the branch representative of a decision to withdraw the ruling request, the adverse letter ruling will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 8.07 of this revenue procedure.

Advises the taxpayer of conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request

SECTION 11. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Service subject to the conditions and limitations described in this section.

Will not apply to another taxpayer

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(j)(3).

Will be used by a district director in examining the taxpayer's return

.03 When determining a taxpayer's liability, the district director must ascertain whether—

- (1) the conclusions stated in the letter ruling are properly reflected in the return;
- (2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;
- (3) the transaction was carried out substantially as proposed; and
- (4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the district director finds that a letter ruling should be revoked or modified, the findings and recommendations of the district director will be forwarded to the national office for consideration before further action is taken by the district director. Such a referral to the national office will be treated as a request for technical advice and the provisions of Rev. Proc. 96-2 will be followed. Otherwise, the letter ruling is to be applied by the district director in the determination of the taxpayer's liability. Appropriate coordination with the national office will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

May be revoked or modified if found to be in error

.04 Unless it was part of a closing agreement as described in section 2.02 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified due to—

- (1) a notice to the taxpayer to whom the letter ruling was issued;
- (2) the enactment of legislation or ratification of a tax treaty;
- (3) a decision of the United States Supreme Court;
- (4) the issuance of temporary or final regulations; or
- (5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

Not generally revoked or modified retroactively

.05 Except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;
- (3) there has been no change in the applicable law;
- (4) the letter ruling was originally issued for a proposed transaction; and
- (5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

Retroactive effect of revocation or modification applied to a particular transaction

.06 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final), if conditions (1) through (5) in section 11.05 of this revenue procedure are met.

However, if a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

Retroactive effect of revocation or modification applied to a continuing action or series of actions

.07 If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified. For example, the retroactive effect of the revocation or modification of a letter ruling covering a continuing action or series of actions ordinarily would be limited in the following situations when the letter ruling is in error or no longer in accord with the position of the Service:

- (1) A taxpayer received a letter ruling that certain payments are excludable from gross income for federal income tax purposes. However, the taxpayer ordinarily would be protected only for the payment received after the letter ruling was issued and before the revocation or modification of the letter ruling.
- (2) A taxpayer rendered a service or provided a facility that is subject to the excise tax on services or facilities and, in relying on a letter ruling received, did not pass the tax on to the user of the service or the facility.
- (3) An employer incurred liability under the Federal Insurance Contributions Act but, in relying on a letter ruling received, neither collected the employee tax nor paid the employee and employer taxes under the Federal Insurance Contributions Act. The retroactive effect would be limited for both the employer and employee tax. However, the limitation would be conditioned on the employer furnishing wage data, as may be required by § 31.6011(a)-1 of the Employment Tax Regulations.

Generally not retroactively revoked or modified if related to sale or lease subject to excise tax

.08 A letter ruling holding that the sale or lease of a particular article is subject to the manufacturer's excise tax or the retailer's excise tax may not retroactively revoke or modify an earlier letter ruling holding that the sale or lease of such an article was not taxable if the taxpayer to whom the letter ruling was issued, in relying on the earlier letter ruling, gave up possession or ownership of the article without passing the tax on to the customer. (Section 1108(b), Revenue Act of 1926.)

May be retroactively revoked or modified when transaction is entered into before the issuance of the letter ruling

.09 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling because the taxpayer did not enter into the transaction relying on a letter ruling.

May be retroactively revoked or modified when transaction is entered into after a change in material facts

.10 If a letter ruling is issued covering a particular transaction and the material facts on which the letter ruling is based are later changed, a taxpayer is not protected against retroactive revocation or modification of the letter ruling when the transaction is completed after the change in the material facts. Similarly, a taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a continuing action or a series of actions occurring after the material facts on which the letter ruling is based have changed.

Taxpayer may request that retroactivity be limited

.11 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling or determination letter will be applied without retroactive effect.

A taxpayer to whom a letter ruling or determination letter has been issued may request that the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, limit the retroactive effect of any revocation or modification of the letter ruling or determination letter.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 8 of this revenue procedure. Specifically, the request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of the five items listed in section 11.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of modifying or revoking a letter ruling previously issued to the taxpayer, or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling. However, when notice is given by the district director during an examination of the taxpayer's return or by the chief, appeals office, during consideration of the taxpayer's return before an appeals office, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 17.04 of Rev. Proc. 96-2.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in the national office as explained in sections 10.09, 10.11, and 10.12 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b) issue will be discussed at the taxpayer’s one conference of right as explained in section 10.09 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Service determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 12. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by a district director has the same effect as a letter ruling issued to a taxpayer under section 11 of this revenue procedure.

If a district director proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to the national office as is required for a letter ruling found to be in error. However, the district director must refer the matter to the national office if the district director desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 A district director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if a district director proposes to revoke or modify a determination letter, the taxpayer may request limitation of the retroactive effect of the revocation or modification by asking the district director who issued the determination letter to seek technical advice from the national office. *See* section 17.02(2) of Rev. Proc. 96–2.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A taxpayer’s request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 17.04 of Rev. Proc. 96–2. The request must also—

- (a) state that it is being made under § 7805(b);
- (b) state the relief sought;
- (c) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 11.05 of this revenue procedure and any other factors as they relate to the taxpayer’s particular situation); and
- (d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference in the national office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* sections 12 and 17.05 of Rev. Proc. 96–2.

SECTION 13. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A DISTRICT OFFICE AND THE NATIONAL OFFICE?

Requests for determination letters

.01 Requests for determination letters received by district directors that, under the provisions of this revenue procedure, may not be issued by a district office, will be forwarded to the national office for reply. The district office will notify the taxpayer that the matter has been referred.

District directors will also refer to the national office any request for a determination letter that in their judgment should have the attention of the national office.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to the national office. The district office will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. See section 7 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for letter rulings received by the national office that, under section 5 of this revenue procedure, may not be acted upon by the national office will be forwarded to the district office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 7 of this revenue procedure and the Service decides not to issue a letter ruling or an information letter, the national office will notify the taxpayer and will then forward the request to the appropriate district office for association with the related return.

SECTION 14. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTS FOR LETTER RULINGS AND DETERMINATION LETTERS?

Legislation authorizing user fees

.01 Section 10511 of the Revenue Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-382, 1330-446, enacted December 22, 1987, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 511, enacted November 5, 1990, and by § 743 of the Uruguay Round Agreements Act, 1995-1 C.B. 230, 239, enacted December 8, 1994 (hereafter the three laws are referred to together as the "Act"), provides that the Secretary of the Treasury or delegate (the "Secretary") shall establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees apply to requests made on or after February 1, 1988, and before October 1, 2000. The fees charged under the program are to: (1) vary according to categories or subcategories established by the Secretary; (2) be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) be payable in advance. The Secretary is to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in the Act.

Requests to which a user fee applies

- .02** In general, user fees apply to all requests for—
- (1) letter rulings, determination letters, and advance pricing agreements;
 - (2) closing agreements described in paragraph (A)(2)(e) of Appendix A of this revenue procedure;
 - (3) renewal of advance pricing agreements; and
 - (4) reconsideration of letter rulings or determination letters.

Requests to which a user fee applies must be accompanied by the appropriate fee as determined from the fee schedule provided in Appendix A of this revenue procedure. The fee may be refunded as provided in section 14.09 of this revenue procedure.

Requests to which a user fee does not apply

- .03** User fees do not apply to—
- (1) elections made pursuant to section 4 of Rev. Proc. 92-85, pertaining to automatic extensions of time under § 301.9100-1 (*see* section 5.02 of this revenue procedure);
 - (2) requests for information letters; or
 - (3) requests for a change in accounting period or accounting method permitted to be made by a published automatic change revenue procedure or notice (*see* section 9.03 of this revenue procedure).

Exemptions from the user fee requirements

- .04** The user fee requirements do not apply to—
- (1) departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling or determination letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged does not have any bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code; or

(2) requests as to whether a worker is an employee for federal employment taxes and income tax withholding purposes (chapters 21, 22, 23, and 24 of subtitle C of the Code) submitted on Form SS-8, Information for Use in Determining Whether a Worker Is an Employee for Federal Employment Taxes and Income Tax Withholding, or its equivalent.

Fee schedule

.05 The schedule of user fees is provided in Appendix A. See Rev. Proc. 96-8 for the user fee requirements applicable to requests for letter rulings, determination letters, etc., under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

Applicable user fee for a request involving multiple offices, fee categories, issues, transactions, or entities

.06

(1) Requests involving several offices. If a request dealing with only one transaction involves more than one of the offices within the Service (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Domestic) and another issue is under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations)), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. See Rev. Proc. 96-8 for the user fees applicable to issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

(2) Requests involving several fee categories. If a request dealing with only one transaction involves more than one fee category, only one fee applies, namely the highest fee that otherwise would apply to each of the categories involved.

(3) Requests involving several issues. If a request dealing with only one transaction involves several issues, a request for a change in accounting method dealing with only one item or sub-method of accounting involves several issues, or a request for a change in accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, namely the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction or item will not result in an additional fee, unless the issue places the transaction or item in a higher fee category.

(4) Requests involving several unrelated transactions. If a request involves several unrelated transactions, a request for a change in accounting method involves several unrelated items or sub-methods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction or item. An additional fee will apply if the request is changed by the addition of an unrelated transaction or item not contained in the initial request.

(5) Requests involving several entities. Each entity involved in a transaction (for example, a reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. In certain situations, however, a reduced user fee may be charged. See paragraph (A)(4) of Appendix A of this revenue procedure.

Method of payment

.07 Each request to the Service for a letter ruling, determination letter, advance pricing agreement, closing agreement described in paragraph (A)(2)(e) of Appendix A of this revenue procedure, or reconsideration of a letter ruling or determination letter must be accompanied by a check or money order, payable to the Internal Revenue Service, in the appropriate amount. (However, the user fee check or money order should not be attached to the Form 2553, Election by a Small Business Corporation, when it is filed at the Service Center. If on the Form 2553 the corporation requests a ruling that it be permitted to use a fiscal year under section 6.03 of Rev. Proc. 87-32, the Service Center will forward the request to the national office. When the national office receives the Form 2553 from the Service Center, it will notify the taxpayer that the fee is due.) Taxpayers should not send cash.

Effect of nonpayment or payment of incorrect amount

.08 If a request is not accompanied by a properly completed check or money order or is accompanied by a check or money order for less than the correct amount, the respective office within the Service that is responsible for issuing the letter ruling, determination letter, advance pricing agreement, closing agreement, or reconsideration of a letter ruling or determination letter generally will exercise discretion in deciding whether to return immediately the request. If a request is not immediately returned, the taxpayer will be contacted and given a reasonable amount of time to submit the

proper fee. If the proper fee is not received within a reasonable amount of time, the entire request will then be returned. However, the Service will usually defer substantive consideration of a request until proper payment has been received. The return of a request to the taxpayer may adversely affect substantive rights if the request is not perfected and resubmitted to the Service within 30 days of the date of the cover letter returning the request.

If a request is accompanied by a check or money order for more than the correct amount, the request will be accepted and the amount of the excess payment will be returned to the taxpayer.

Refunds of user fee

.09 In general, the fee will not be refunded unless the Service declines to rule on all issues for which a ruling is requested.

(1) The following situations are examples of situations in which the fee will not be refunded:

(a) The request for a letter ruling, determination letter, etc., is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the taxpayer that a higher user fee than was sent with the request is applicable and the taxpayer is unwilling to pay the higher fee.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and is not timely perfected by the requester. When there is a failure to perfect timely the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure. *See* section 10.06(3) of this revenue procedure.

(c) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(d) The request contains several issues, and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(e) The taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or not responsive (other than an issue on which the Service has declined to rule) and requests reconsideration. The Service, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(f) The situation is the same as described in paragraph (e) of this section 14.09(1) except that the letter ruling covered several unrelated transactions. The Service, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Service agrees the letter ruling was in error.

(g) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(h) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples of situations in which the fee will be refunded:

(a) In a situation to which section 14.09(1)(h) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Service declined to rule) and requests reconsideration. The Service agrees, upon reconsideration, that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 14.09(1)(h) of this revenue procedure does not apply, the taxpayer requests a supplemental letter ruling, determination letter, etc., to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 14.09(1)(d) of this revenue procedure applied, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

Request for reconsideration of user fee

.10 A taxpayer that believes the user fee charged by the Service for its request for a letter ruling, determination letter, advance pricing agreement, or closing agreement is either not applicable or incorrect and wishes to receive a refund of all or part of the amount paid (*see* section 14.09 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Service at the address given in section 8.03 in this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:

Mark for the attention of:

Associate Chief Counsel
(Domestic) letter ruling requests

Assistant Chief Counsel () (Complete by using whichever of the following designations applies.)

(Corporate)
(Financial Institutions and Products)
(Income Tax and Accounting)
(Passthroughs and Special Industries)

Associate Chief Counsel
(Employee Benefits & Exempt Organizations) letter ruling requests

Assistant Chief Counsel (Employee Benefits & Exempt Organizations)

Associate Chief Counsel
(Enforcement Litigation) letter ruling requests

Assistant Chief Counsel (General Litigation)

Associate Chief Counsel
(International) letter ruling and advance pricing agreement requests

Assistant Chief Counsel (International)

Determination letter requests submitted pursuant to this revenue procedure

Chief, Examination Division,

District Office

(Add name of district office handling the request.)

SECTION 15. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 95-1?

.01 Section 2.04 is amended to provide that a taxpayer should provide a daytime telephone number in a request for an information letter.

.02 Sections 3.01(2), (3), and (4) are amended to reflect the change in jurisdiction involving requests for a change in accounting method.

.03 Section 5.01(3) is amended to conform with Rev. Proc. 95-10, providing that the national office will consider letter ruling requests concerning the classification of a domestic or foreign limited liability company as a partnership for federal tax purposes.

.04 Sections 8.01(9)(c), (10), (12), and (13) are amended to clarify that a stamped signature is not permitted.

.05 Section 8.01(11)(d) is redesignated as section 8.01(11)(e) and new section 8.01(11)(d) is added to list an enrolled actuary as an authorized representative.

.06 If a taxpayer provides one penalties of perjury statement that refers to all submissions of additional factual information, section 8.01(13) is amended to clarify that this penalties of perjury statement is provided subsequent to all such submissions.

.07 While a taxpayer generally is required to submit one copy of a letter ruling request, section 8.01(14) is amended to provide that a taxpayer is encouraged to submit additional copies of the request if more than one issue is presented.

.08 Section 8.02(2)(b) is amended to conform to Form 2848, Power of Attorney and Declaration of Representative, revised as of December 1995.

.09 Section 9 is updated to reflect the revenue procedures and notices issued in 1995.

.10 Section 10.17 is added to provide that generally, before the letter ruling is issued, the branch representative will inform the taxpayer or the taxpayer's representative of the Service's conclusions and, if the Service is going to rule adversely, will offer the taxpayer the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the branch representative of a decision to withdraw the ruling request, the adverse letter ruling will be issued.

.11 Section 14.09(2) is amended by adding a new example of a situation in which the user fee will be refunded.

.12 The user fee in Appendix A for advance pricing agreements and renewals is increased. In addition, a new reduced user fee category for advance pricing agreements and renewals is established in Appendix A for U.S. persons with gross income of at least \$100,000,000 and less than \$1,000,000,000.

.13 If a domestic partnership or corporation is not subject to tax, the reduced user fee in Appendix A for domestic partnerships and corporations is amended to provide that total income and cost of goods sold are the amounts that the domestic partnership or corporation would have reported on the federal income tax return if the domestic partnership or corporation were subject to tax.

.01 Rev. Proc. 95-1, 1995-1 C.B. 313, is superseded.

.02 Rev. Proc. 91-22, 1991-1 C.B. 526, is modified by deleting all references to Rev. Proc. 87-4, Rev. Proc. 88-4, and Rev. Proc. 90-17 and replacing them with references to this revenue procedure, and by substituting for the user fee that Rev. Proc. 91-22 provides for, the corresponding user fee set forth in this revenue procedure.

.03 Rev. Proc. 92-20, 1992-1 C.B. 685, is modified by deleting all references to Rev. Proc. 90-17 and replacing them with references to this revenue procedure for requests for changes in accounting method under the jurisdiction of the Associate Chief Counsel (Domestic).

.04 Rev. Proc. 92-85, 1992-2 C.B. 490, is modified. Section 5.02(2) of Rev. Proc. 92-85 is amended to read as follows:

Ordinarily, the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before receipt of a § 301.9100-1 ruling. Consequently, if necessary, a taxpayer requesting relief must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. The filing of a request for relief under § 301.9100-1 does not suspend the running of any applicable period of limitations. In addition, the filing of a claim for refund under § 6511 does not extend the period of limitations on assessment.

The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to section 6.06 of this revenue procedure) certifying that the requirements of section 5.02(1) of this revenue procedure are satisfied.

This revenue procedure is effective January 2, 1996, except that any increase in the user fee in Appendix A and any changes made to the procedural matters in paragraph (B) of Appendix A are effective only for requests postmarked or, if not mailed, received on or after January 8, 1996.

SECTION 16. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

SECTION 17. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Reed of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure for matters under the jurisdiction of—

(1) the Associate Chief Counsel (Domestic) or the Associate Chief Counsel (Employee Benefits and Exempt Organizations), contact Ms. Reed on (202) 622-3110 (not a toll-free call);

(2) the Associate Chief Counsel (International), contact Gerard Traficanti on (202) 622-3830 (not a toll-free call); or

(3) the Associate Chief Counsel (Enforcement Litigation), contact Peter J. Devlin on (202) 622-3600 (not a toll-free call).

For further information regarding user fees, contact Wayne Thomas on (202) 622-7560 (not a toll-free call).

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APPENDIX A
SCHEDULE OF USER FEES

(A) FEE SCHEDULE

<i>CATEGORY</i>	<i>FEE</i>
(1) User fee for a determination letter request. The user fee for each determination letter request governed by this revenue procedure.	\$275
(2) User fee for a request for a letter ruling or closing agreement. Except for reduced fees provided in paragraph (A)(3) and (4) of this appendix and exemptions provided in section 14.04 of this revenue procedure, the user fee for each request for a letter ruling or closing agreement under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International) is as follows:	
(a) Accounting periods	
(i) Forms 1128 and 2553	\$200
(ii) Letter ruling requests for extensions of time to file Form 1128 under § 301.9100-1	\$275
(b) Changes in Accounting Methods	
(i) Form 3115 (except as provided in paragraph (A)(3)(a), (b), (c), or (d), or (4)(b) of this appendix)	\$900
(ii) Except as provided in paragraph (A)(4)(c) of this appendix, letter ruling requests for extensions of time to file Form 3115 under § 301.9100-1	\$275
NOTE: A taxpayer that receives an extension of time under § 301.9100-1 will be charged a separate user fee for the accounting period or accounting method application. No user fee is required if the change in accounting period or accounting method is permitted to be made pursuant to a published automatic change revenue procedure or notice. See section 9.03 of this revenue procedure for the list of automatic change revenue procedures and notices published and in effect as of December 31, 1995.	
(c) Requests for advance pricing agreements and renewals (except as provided in paragraph (A)(3)(e) or (f) of this appendix)	\$25,000
(d) All other letter ruling requests (which includes accounting period and accounting method requests other than those properly submitted on Form 1128, 2553, or 3115) (except as provided in paragraph (A)(3)(a), (b), (c), or (d), or (4)(a) of this appendix)	\$3,575
(e) Requests for closing agreements on a proposed transaction or on a completed transaction before a return for the transaction has been filed in which a letter ruling on that transaction is not requested or issued (except as provided in paragraph (A)(3)(a), (b), (c), or (d) of this appendix)	\$3,575
(3) Reduced user fee for a request for a letter ruling or closing agreement. A reduced user fee is provided in the following situations if the person provides the certification described in paragraph (B)(1) of this appendix:	
(a) U.S. citizens and resident alien individuals, domestic trusts, and domestic estates with gross income (as determined under paragraph (B)(2) and (4) of this appendix) of less than \$150,000	\$500
(b) Nonresident alien individuals, foreign trusts, and foreign estates with gross income (as determined under paragraph (B)(3) and (4) of this appendix) of less than \$150,000	\$500
(c) Domestic partnerships and corporations with gross income (as determined under paragraph (B)(5) of this appendix) of less than \$150,000	\$500
(d) Organizations exempt from income tax under “Subchapter F-Exempt Organizations” of the Code with gross receipts (as determined under paragraph (B)(6) of this appendix) of less than \$150,000	\$500
(e) Requests for advance pricing agreements and renewals from U.S. persons with gross income (as determined under paragraph (B)(7) of this appendix) of at least \$100,000,000 and less than \$1,000,000,000	\$15,000
(f) Requests for advance pricing agreements and renewals from U.S. persons with gross income (as determined under paragraph (B)(7) of this appendix) of less than \$100,000,000	\$5,000
(4) Reduced user fee for substantially identical letter ruling requests or identical accounting method changes. A reduced user fee is provided in the following situations if the requirements of Rev. Proc. 92-90, 1992-2 C.B. 501, are satisfied:	
(a) Substantially identical letter rulings requested	
Situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, for each additional letter ruling request after the \$3,575 fee or \$500 reduced fee, as applicable, has been paid for the first letter ruling request	\$150

(b) Identical accounting method change requested on a single Form 3115

Situations in which a parent corporation requests the identical accounting method change on a single Form 3115 on behalf of more than one member of a consolidated group, for each additional member of the group seeking the identical accounting method change on the same Form 3115 after the \$900 fee or \$500 reduced fee, as applicable, has been paid for the first member of the group

\$50

(c) Extension of time requested to file Form 3115 for an identical accounting method change

Situations in which a parent corporation requests an extension of time to file Form 3115 under § 301.9100-1 for the identical accounting method change on behalf of more than one member of a consolidated group, for each additional member of the group seeking the identical accounting method change on the same application after the \$275 fee has been paid for the first member of the group

\$50

NOTE: A parent corporation and each member of a consolidated group that is entitled to a reduced user fee under paragraph (A)(4)(b) of this appendix, that receives an extension of time to file Form 3115 under § 301.9100-1 will be charged a separate user fee for the accounting method application.

(B) *PROCEDURAL MATTERS*

(1) Required certification. A person seeking a reduced user fee under paragraph (A)(3) of this appendix must provide the following certification in order to obtain the reduced user fee:

(a) If a person is seeking a reduced user fee under paragraph (A)(3)(a), (b), or (c) of this appendix, the person must certify in the request that his, her, or its gross income, as defined under paragraph (B)(2), (3), or (5) of this appendix, as applicable, is less than \$150,000 for the last full (12 months) taxable year ending before the date the request is filed.

(b) If an organization exempt from income tax under Subchapter F of the Code is seeking a reduced user fee under paragraph (A)(3)(d) of this appendix, the organization must certify in its request that its gross receipts are less than \$150,000 for the last full (12 months) taxable year ending before the date the request is filed.

(c) If a U.S. person is seeking a reduced user fee under paragraph (A)(3)(e) of this appendix, the U.S. person must certify in its request for an advance pricing agreement and renewal that its gross income, as defined under paragraph (B)(7) of this appendix, is at least \$100,000,000 and less than \$1,000,000,000 for the last full (12 months) taxable year ending before the date the request is filed.

(d) If a U.S. person is seeking a reduced user fee under paragraph (A)(3)(f) of this appendix, the U.S. person must certify in its request for an advance pricing agreement and renewal that its gross income, as defined under paragraph (B)(7) of this appendix, is less than \$100,000,000 for the last full (12 months) taxable year ending before the date the request is filed.

(2) Gross income of U.S. citizens and resident alien individuals, domestic trusts, and domestic estates. For purposes of the reduced user fee provided in paragraph (A)(3)(a) of this appendix for U.S. citizens and resident alien individuals, domestic trusts, and domestic estates, “gross income” is equal to “total income” as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. “Total income” is a line item on federal tax returns. For example, if the 1994 Form 1040, U.S. Individual Income Tax Return, is the most recent 12-month taxable year return filed by a U.S. citizen, “total income” on the Form 1040 is the amount entered on line 22.

In the case of a request for a letter ruling or closing agreement from a domestic estate or trust that, at the time the request is filed, has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(3)(a) of this appendix will apply if the decedent’s or (in the case of an individual grantor) the grantor’s total income as reported on the last federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this paragraph (B)(2), is less than \$150,000. In this case, the executor or administrator of the decedent’s estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(3) Gross income of nonresident alien individuals, foreign trusts, and foreign estates. For purposes of the reduced user fee provided in paragraph (A)(3)(b) of this appendix for nonresident alien individuals, foreign trusts, and foreign estates, “gross income” is equal to “total effectively connected income” as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any income for the period from United States or foreign sources that is not taxable by the United States, whether by reason of § 103, an income tax treaty, § 871(h) (regarding portfolio interest), or otherwise, plus the total amount of any fixed or determinable annual or periodical income from United States sources, the United States tax liability for which is satisfied by withholding at the source. “Total effectively connected income” is a line item on federal tax returns. For example, if the 1994 Form 1040NR, U.S. Nonresident Alien Income Tax Return, is the most recent 12-month taxable year return filed by a nonresident alien individual, “total effectively connected income” on the Form 1040NR is the amount entered on line 23.

In the case of a request for a letter ruling or closing agreement from a foreign estate or trust that, at the time the request is filed, has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(3)(b) of this appendix will apply if the decedent’s or (in the case of an individual grantor) the grantor’s total income or total effectively

connected income, as relevant, as reported on the last federal income tax return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income or total effectively connected income described respectively in paragraph (B)(2) of this appendix or in this paragraph (B)(3), is less than \$150,000. In this case, the executor or administrator of the decedent's estate or the grantor must provide the certification required under paragraph (B)(1) of this appendix.

(4) Special rules for determining gross income of individuals, trusts, and estates. For purposes of paragraph (B)(2) and (3) of this appendix, the following rules apply for determining whether gross income is less than \$150,000:

(a) In the case of a request from a married individual, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicant and the applicant's spouse must be combined. This rule does not apply to an individual who is legally separated from his or her spouse if the spouses do not file a joint income tax return with each other; and

(b) If there are two or more applicants filing the request, the gross incomes (as defined in paragraph (B)(2) or (3) of this appendix, as applicable) of the applicants must be combined.

(5) Gross income of domestic partnerships and corporations. For purposes of the reduced user fee provided in paragraph (A)(3)(c) of this appendix for domestic partnerships and corporations, "gross income" is equal to "total income" as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus "cost of goods sold" as reported on the same federal income tax return, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. If a domestic partnership or corporation is not subject to tax, "total income" and "cost of goods sold" are the amounts that the domestic partnership or corporation would have reported on the federal income tax return if the domestic partnership or corporation were subject to tax.

"Cost of goods sold" and "total income" are line items on federal tax returns. For example, if the 1994 Form 1065, U.S. Partnership Return of Income, is the most recent 12-month taxable year return filed by a domestic partnership, "cost of goods sold" and "total income" on the Form 1065 are the amounts entered on lines 2 and 8, respectively, and if the 1994 Form 1120, U.S. Corporation Income Tax Return, is the most recent 12-month taxable year return filed by a domestic corporation, "cost of goods sold" and "total income" on the Form 1120 are the amounts entered on lines 2 and 11, respectively.

The following rules apply in determining whether gross income is less than \$150,000:

(a) In the case of a request for a letter ruling or closing agreement from a domestic corporation, the gross income (as defined in this paragraph (B)(5)) of (i) all members of the applicant's controlled group (as defined in § 1563(a)), and (ii) any related taxpayer that is involved in the transaction on which the letter ruling or closing agreement is requested, must be combined; and

(b) In the case of a request for a letter ruling or closing agreement from a domestic partnership, the gross income (as defined in this paragraph (B)(5)) of (i) the partnership, and (ii) any partner who owns, directly or indirectly, 50 percent or more of the capital interest or profits interest in the partnership, must be combined.

If, at the time the request is filed, a domestic partnership or corporation subject to tax has not filed a federal income tax return for a full taxable year, the reduced user fee in paragraph (A)(3)(c) of this appendix will apply if, in the aggregate, the partners' or the shareholders' gross income (as defined in paragraph (B)(2), (3), or (5) of this appendix, as applicable) is less than \$150,000 for the last full taxable year ending before the date the request is filed. In this case, the partners or the shareholders must provide the certification required under paragraph (B)(1) of this appendix.

(6) Gross receipts of an exempt organization. For purposes of the reduced user fee provided in paragraph (A)(3)(d) of this appendix for organizations exempt from income tax under "Subchapter F-Exempt Organizations" of the Code, "gross receipts" is the amount of gross receipts for the last full (12 months) taxable year ending before the date the request for a letter ruling or closing agreement is filed. If there are two or more organizations exempt from income tax under Subchapter F filing the request, the gross receipts of the applicants must be combined in determining whether gross receipts are less than \$150,000.

(7) Gross income of U.S. persons. For purposes of the reduced user fee provided in paragraph (A)(3)(e) or (f) of this appendix for U.S. persons requesting advance pricing agreements and renewals, "gross income" is equal to "total income" as reported on their last federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus "cost of goods sold" as reported on the same federal income tax return, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period. Gross income (as defined in this paragraph (B)(7)) of all U.S. members of the controlled group must be combined in determining whether gross income is: (a) at least \$100,000,000 and less than \$1,000,000,000 for purposes of the reduced user fee provided in paragraph (A)(3)(e) of this appendix; and (b) less than \$100,000,000 for purposes of the reduced user fee provided in paragraph (A)(3)(f) of this appendix.

APPENDIX B
SAMPLE FORMAT FOR A LETTER RULING REQUEST

INSTRUCTIONS

To assist you in preparing a letter ruling request, the Service is providing this sample format. You are not required to use this sample format. If your request is not identical or similar to the sample format, the different format will not defer consideration of your request.

(Insert the date of request)

Internal Revenue Service
Associate Chief Counsel *(Insert one of
the following: Domestic, Employee Benefits
and Exempt Organizations, Enforcement
Litigation, or International)*

Attn: CC:DOM:CORP:T

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Dear Sir or Madam:

(Insert the name of the taxpayer) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under section *(insert the number)* of the Internal Revenue Code.

[If the taxpayer is requesting expeditious handling, a statement to that effect must be attached to, or contained in, the letter ruling request. The statement must explain the need for expeditious handling. See section 8.02(4) of Rev. Proc. 96-1, 1996-1 I.R.B. 8. Hereafter, all references are to Rev. Proc. 96-1 unless otherwise noted.]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 8.01(1)(a), (b), and (c).]

2. Description of Taxpayer's Business Operations

[Provide the statement required by section 8.01(1)(d).]

3. Facts Relating to Transaction

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 8.01(1)(e), 8.01(1)(f), and 8.01(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer. It is preferred that the language of the requested ruling be exactly the same that the taxpayer wishes to receive.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer's views or conclusion and identify any pending legislation that may affect the proposed transaction. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. See sections 8.01(6), 8.01(7), and 8.01(8).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request. See sections 8.01(3), 8.01(6), 8.01(7), and 8.01(8).]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. Revenue Procedure 96-1 Statements

- a. [Provide the statement required by section 8.01(4) regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer.]
- b. [Provide the statement required by section 8.01(5)(a) regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor.]
- c. [Provide the statement required by section 8.01(5)(b) regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or similar issue but withdrew the request before a letter ruling or determination letter was issued.]
- d. [Provide the statement required by section 8.01(5)(c) regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Service.]
- e. [Provide the statement required by section 8.01(5)(d) regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or similar issue to the Service.]
- f. [Provide the statement required by section 8.01(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- g. [If the taxpayer determines that there are no contrary authorities, a statement to that effect would be helpful. See section 8.01(7).]
- h. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. See section 8.02(6).]
- i. [If the taxpayer is requesting a copy of the letter ruling to be sent by facsimile (fax) transmission, the ruling request should contain a statement to that effect. This statement must also contain a waiver of any disclosure violations resulting from the fax transmission. See section 8.02(5).]
- j. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 8.02(1).]

2. Administrative

- a. [The ruling request should state: “The deletions statement and checklist required by Rev. Proc. 96–1 are enclosed.” See sections 8.01(9) and 8.01(16).]
- b. [The ruling request should state: “The required user fee of \$(*Insert the amount of the fee*) is enclosed.” See section 14 and Appendix A.]
- c. [If the taxpayer’s authorized representative is to sign the letter ruling request or is to appear before the Service in connection with the request, the ruling request should state: “A Power of Attorney is enclosed.” See sections 8.01(11), 8.01(12), and 8.02(2).]

Very truly yours,

(Insert the name of the taxpayer or the taxpayer’s authorized representative)

By:

Signature Date

Typed or printed name of person signing request

DECLARATION: [See section 8.01(13).]

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested letter ruling are true, correct, and complete.

(Insert the name of the taxpayer)

By:

Signature Title Date

Typed or printed name of person signing declaration

[If the taxpayer is a corporation that is a member of an affiliated group filing consolidated returns, the above declaration must also be signed and dated by an officer of the common parent of the group. See section 8.01(13).]

APPENDIX C
CHECKLIST
IS YOUR LETTER RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the five items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request, or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not either cause the return of your request or defer substantive consideration of your request.** However, you should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME _____

TAXPAYER'S I.D. NO. _____

DISTRICT HAVING AUDIT JURISDICTION _____

ATTORNEY/P.O.A. _____

PRIMARY CODE SECTION _____

CIRCLE ONE

ITEM

- | | | |
|------|----|--|
| Yes | No | 1. Does your request involve an issue under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International)? See section 3 of Rev. Proc. 96-1, 1996-1 I.R.B. 14. For issues under the jurisdiction of other offices, see section 4 of Rev. Proc. 96-1. (Hereafter, all references are to Rev. Proc. 96-1 unless otherwise noted.) |
| Yes | No | 2. Have you read Rev. Proc. 96-3, 1996-1 I.R.B. 82, and Rev. Proc. 96-7, 1996-1 I.R.B. 185, to see if part or all of the request involves a matter on which letter rulings are not issued or are ordinarily not issued? |
| Yes | No | 3. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a letter ruling? Before preparing your request, you may want to call the branch in the Office of the Associate Chief Counsel (Domestic), the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Office of the Associate Chief Counsel (Enforcement Litigation), or the Office of the Associate Chief Counsel (International) responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. For matters under the jurisdiction of— |
| | | (a) the Office of Associate Chief Counsel (Domestic) and the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), the appropriate branch to call may be obtained by calling (202) 622-7560 (not a toll-free call); |
| | | (b) the Office of the Associate Chief Counsel (International), the appropriate branch to call may be obtained by calling (202) 622-3800 (not a toll-free call); or |
| | | (c) the Office of the Associate Chief Counsel (Enforcement Litigation), the appropriate branch to call may be obtained by calling (202) 622-3600 (not a toll-free call). |
| Yes | No | 4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? See sections 5.01, 5.05, 5.06, 5.07, 5.08, and 5.09. |
| Page | — | N/A |
| Yes | No | 5. Are you requesting a letter ruling on a hypothetical situation or question? See section 7.02. |
| Yes | No | 6. Are you requesting a letter ruling on alternative plans of a proposed transaction? See section 7.02. |
| Yes | No | 7. Are you requesting the letter ruling for only part of an integrated transaction? See sections 7.03 and 8.01(1). |
| Yes | No | 8. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? See section 5.11. |

- Yes No 9. Are you requesting the letter ruling for a foreign government or its political subdivision? See section 5.12.
- Yes No 10. Have you included a complete statement of all the facts relevant to the transaction? See section 8.01(1).
Pages —
- Yes No N/A 11. Have you submitted with the request true copies of all wills, deeds, and other documents relevant to the transaction, and labelled and attached them in alphabetical sequence? See section 8.01(2).
- Yes No N/A 12. Have you submitted with the request certified English translations and a copy of all applicable foreign laws? See section 8.01(2).
- Yes No 13. Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 8.01(3).
Pages —
- Yes No 14. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 8.01(4).
Page —
- Yes No 15. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 8.01(5)(a).
Page —
- Yes No 16. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or similar issue but withdrew the request before the letter ruling or determination letter was issued? See section 8.01(5)(b).
Page —
- Yes No 17. Have you included the required statement regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or similar issue that is currently pending with the Service? See section 8.01(5)(c).
Page —
- Yes No 18. Have you included the required statement regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or similar issue to the Service? See section 8.01(5)(d).
Page —
- Yes No 19. Have you included the required statement of relevant authorities in support of your views? See section 8.01(6).
Pages —
- Yes No 20. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 8.01(6).
Page —
- Yes No 21. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures that you determined to be contrary to the position advanced? See section 8.01(7), which states that taxpayers are encouraged to inform the Service of such authorities.
Pages —
- Yes No N/A 22. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 8.01(7).
Page —
- Yes No N/A 23. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 8.01(8).
Page —
- Yes No 24. Is the request accompanied by the deletions statement required by § 6110? See section 8.01(9).
- Yes No 25. Have you (or your authorized representative) signed and dated the request? See section 8.01(10).
Page —
- Yes No N/A 26. If the request is signed by your representative or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 8.01(12).
- Yes No 27. Have you included, signed, and dated the penalties of perjury statement in the form required by section 8.01(13)?
Page —
- Yes No N/A 28. Are you submitting your request in duplicate if necessary? See section 8.01(14).
- Yes No N/A 29. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 8.02(1).
Pages —
- Yes No N/A 30. If you want copies of the letter ruling sent to more than one representative, does the power of attorney contain a statement to that effect? See section 8.02(2)(a).
- Yes No N/A 31. If you want the original of the letter ruling to be sent to a representative, does the power of attorney contain a statement to that effect? See section 8.02(2)(b).
- Yes No N/A 32. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 8.02(2)(c).
- Yes No N/A 33. If you are making a two-part letter ruling request, have you included a summary statement of the facts you believe to be controlling? See section 8.02(3).

- Yes No N/A
Page — 34. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expeditious handling in the manner required by section 8.02(4) and stated a compelling need for such action in the request?
- Yes No N/A
Page — 35. If you are requesting a copy of the letter ruling to be sent by facsimile (fax) transmission, have you included a statement containing a waiver of any disclosure violations resulting from the fax transmission? See section 8.02(5).
- Yes No N/A
Page — 36. If you want to have a conference on the issues involved in the request, have you included a request for conference in the letter ruling request? See section 8.02(6).
- Yes No 37. Have you included the correct user fee with the request and made your check or money order payable to the Internal Revenue Service? See section 14 and Appendix A to determine the correct amount.
- Yes No N/A
Page — 38. If you qualify for the reduced user fee when gross income or gross receipts, as applicable, is less than \$150,000, have you included the required certification? See paragraphs (A)(3) and (B)(1) of Appendix A.
- Yes No N/A
Page — 39. If you qualify for the reduced user fee for substantially identical letter rulings, have you included the information required by Rev. Proc. 92-90, 1992-2 C.B. 501? See paragraph (A)(4)(a) of Appendix A.
- Yes No N/A
Page — 40. If you qualify for the reduced user fee for a § 301.9100-1 request to extend the time for filing an identical accounting method change on a single Form 3115, have you included the information required by Rev. Proc. 92-90? See paragraph (A)(4)(c) of Appendix A.
- Yes No N/A 41. If your request is covered by any of the guideline revenue procedures, safe harbor revenue procedures, or other special requirements listed in section 9, have you complied with all of the requirements of the applicable revenue procedure?

Rev. Proc. _____ List other applicable revenue procedures, including checklists, used or relied upon in the preparation of this letter ruling request (Cumulative Bulletin citation not required).

Yes No N/A
Page — 42. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 11.11?

Yes No 43. Have you addressed your request to the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, at:

**Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044?**

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:DOM:CORP:T for initial processing.

Signature

Title or Authority

Date

Typed or printed name of
person signing checklist

Rev. Proc. 96-2

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- .03 21-day period will be extended if justified and approved
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- .06 Conference may not be taped
- .07 Conference may be delayed to address a request for relief under § 7805(b)
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- .03 Contacts the district or appeals office to discuss issues
- .04 Determines whether any matters in the request should be referred to another branch
- .05 Informs the district or appeals office if additional information is needed
- .06 Gives tentative conclusion
- .07 If a tentative conclusion has not been reached, gives date estimated for tentative conclusion
- .08 Advises the district or appeals office if tentative conclusion is changed
- .09 Discussion with the taxpayer regarding tentative conclusion
- .10 Advises the district or appeals office of final conclusions
- .11 If additional information is requested
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- .02 Usually applies retroactively
- .03 Generally applied retroactively to modify or revoke prior technical advice
- .04 Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked
- .05 Applies to continuing action or series of actions until material facts change

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains when and how the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International) give technical advice to a district director or a chief, appeals office. It also explains the rights a taxpayer has when a district director or a chief, appeals office, requests technical advice regarding a tax matter.

Description of terms used in this revenue procedure

For purposes of this revenue procedure—

(1) any reference to district director or district office includes their respective offices or, when appropriate, the Assistant Commissioner (International) or the director of an Internal Revenue Service Center;

(2) any reference to chief, appeals office, includes, when appropriate, the assistant regional director of appeals (large case);

(3) any reference to chief, examination division includes, when appropriate, the chief, employee plans/exempt organizations division;

(4) any reference to appeals officer includes, when appropriate, the team chief;

(5) the word “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including issuers of § 103 obligations) and, when appropriate, their representatives; and

(6) the word “national office” refers to the Office of Associate Chief Counsel (Domestic), the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Office of Associate Chief Counsel (Enforcement Litigation), or the Office of Associate Chief Counsel (International), as appropriate.

Updated annually

The revenue procedure is updated annually as the second revenue procedure of the year, but may be modified or amplified during the year.

SECTION 2. WHAT IS TECHNICAL ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the national office upon the request of a district director or a chief, appeals office, submitted in accordance with the provisions of this revenue procedure, in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other precedents published by the national office to a specific set of facts. Such proceedings include: (1) the examination of a taxpayer’s return; (2) the consideration of a taxpayer’s claim for refund or credit; (3) any matter under examination or in appeals pertaining to tax-exempt bonds or

mortgage credit certificates; and (4) any other matter involving a specific taxpayer under the jurisdiction of the chief, examination division, or the chief, appeals office. They also include processing and considering nondocketed cases in an appeals office but do not include cases in which the issue in the case is in a docketed case for any taxable year. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and counsel for the Government agree, by memorandum, to the issuance of the technical advice memorandum.

Technical advice helps Internal Revenue Service personnel close cases and also helps establish and maintain consistent holdings throughout the Service. A district director or a chief, appeals office, may raise an issue in any tax period, even though technical advice may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the district or appeals office in writing or orally, other than advice furnished pursuant to this revenue procedure. In accordance with section 10.01 of this revenue procedure, a taxpayer's request for referral of an issue to the national office for technical advice will not be denied merely because the national office has provided legal advice, other than advice furnished pursuant to this revenue procedure, to the district or appeals office on the matter.

SECTION 3. ON WHAT ISSUES MAY TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International)

.01 The instructions of this revenue procedure apply to requests for technical advice on any issue under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), or the Associate Chief Counsel (International), and on certain issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation). See section 3 of Rev. Proc. 96-1, this Bulletin, for a description of the principal subject matters of jurisdiction.

Issues involving shipowners' protection and indemnity associations and certain homeowners associations

.02 The jurisdiction of the Associate Chief Counsel (Domestic) extends to issuing technical advice under §§ 526 (shipowners' protection and indemnity associations) and 528 (certain homeowners associations).

SECTION 4. ON WHAT ISSUES MUST TECHNICAL ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Alcohol, tobacco, and firearms taxes

.01 The procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

Employee plans and exempt organizations

.02 The procedures for obtaining technical advice specifically on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) are found in Rev. Proc. 96-5, this Bulletin. However, the procedures under Rev. Proc. 96-2 (this revenue procedure) must be followed for obtaining technical advice on issues pertaining to tax-exempt bonds and mortgage credit certificates.

Farmers' cooperatives

.03 Even though the Associate Chief Counsel (Domestic) has jurisdiction for issuing technical advice under § 521, the procedures under Rev. Proc. 96-5 and Rev. Proc. 90-27, 1990-1 C.B. 514, as modified by Rev. Proc. 96-8, this Bulletin, as well as § 601.201(n) of the Statement of Procedural Rules (26 C.F.R. § 601.201(n) (1995)), must be followed.

SECTION 5. MAY TECHNICAL ADVICE BE REQUESTED FOR A § 301.9100-1 REQUEST MADE DURING THE COURSE OF AN EXAMINATION?

Section 301.9100-1 request is a letter ruling request

.01 A request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations is a letter ruling request even if the request is submitted after the examination of the taxpayer's return has begun or after the issues in the return are being considered by an appeals office. Therefore, a § 301.9100-1 request should be submitted pursuant to Rev. Proc. 96-1 (including the payment of the applicable user fee listed in Appendix A of Rev. Proc. 96-1). *See* section 5.02 of Rev. Proc. 96-1.

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100-1 request has been filed. If the period of limitations on assessment under § 6501(a) for the year for which a timely filed election would have been made or for any affected succeeding year will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* section 5.02(2) of Rev. Proc. 92-85, 1992-2 C.B. 490, as modified by Rev. Proc. 96-1, and Rev. Proc. 93-28, 1993-2 C.B. 344. Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100-1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations on assessment. *See* section 8.02 of Rev. Proc. 92-85.

Address to send a § 301.9100-1 request

.03 A § 301.9100-1 request, together with the appropriate user fee, must be submitted by the taxpayer to the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, at the following address:

**Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

The package should be marked: RULING REQUEST SUBMISSION. A § 301.9100-1 request may also be hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Avenue, N.W., Washington, DC. No receipt will be given at the drop box. *See* Appendix A of Rev. Proc. 96-1 for the appropriate user fee.

If return is being examined, taxpayer must notify the national office and the national office will notify the district or appeals office

.04 If the taxpayer's return covering the issue presented in the § 301.9100-1 request is being examined by a district office or the issues in the return are being considered by an appeals office, the taxpayer must notify the national office. *See* sections 5.02(1) and (3) of Rev. Proc. 96-1. The national office will notify the appropriate district office or appeals office that a § 301.9100-1 request has been submitted to the national office. The examining officer or appeals officer is not authorized to deny consideration of a § 301.9100-1 request. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate district office or appeals office.

SECTION 6. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?

District director or chief, appeals office, determines whether technical advice should be requested

.01 The district director or chief, appeals office, determines whether to request technical advice on any issue being considered. Each request must be submitted through channels and signed by a person who is authorized to sign for the district director or chief, appeals office.

Taxpayer may ask that issue be referred for technical advice

.02 While a case is under the jurisdiction of a district director or chief, appeals office, a taxpayer may request in writing or orally to the examining officer or appeals officer that an issue be referred to the national office for technical advice.

SECTION 7. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?

Uniformity of position lacking

.01 Technical advice should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by the national office.

When technical advice can be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of a district director or chief, appeals office. Technical advice may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request. A district director may not request technical advice on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504). A case remains under the jurisdiction of the district director even though an appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a district director may not request technical advice on the applicability of any of the taxes involved.

A district director or chief, appeals office, also may not request technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year. If, however, a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and counsel for the Government agree, by memorandum, to the issuance of the technical advice memorandum.

At the earliest possible stage

.03 Once an issue is identified, all requests for technical advice should be made at the earliest possible stage in any proceeding. The fact that the issue is raised late in the examination or appeals process should not influence, however, the district or appeals office's decision to request technical advice.

SECTION 8. WHAT MUST BE INCLUDED IN THE REQUEST?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by a district or appeals office, a request for technical advice must include the facts and the issues for which technical advice is requested and also a written statement clearly stating the applicable law and the arguments in support of both the Service's and the taxpayer's position on the issue or issues.

(1) Taxpayer must submit statement if taxpayer initiates request for technical advice. If the taxpayer initiates the request for technical advice, the taxpayer must submit to the examining officer or appeals officer, at the time the taxpayer initiates the request, a written statement—

- (a) stating the facts and the issues;
- (b) explaining the taxpayer's position;
- (c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any authority supporting the taxpayer's position; and
- (d) stating the reasons for requesting technical advice.

If the examining officer or appeals officer determines that technical advice will be requested, the taxpayer's statement will be forwarded to the national office with the request for technical advice.

(2) Taxpayer is encouraged to submit statement if Service initiates request for technical advice. If the request for technical advice is initiated by a district or appeals office, the taxpayer is encouraged to submit the written statement described in section 8.01(1) of this revenue procedure. If the taxpayer submits this statement, it will be forwarded to the national office with the request for technical advice. If the taxpayer's statement is received after the request for technical advice has been forwarded to the national office, the statement will be forwarded to the national office for association with the technical advice request.

(3) Statement of authorities contrary to taxpayer's position. Whether the request for technical advice is initiated by the taxpayer or by a district or appeals office, the taxpayer is also encouraged to comment on any legislation (or pending legislation), tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists.

Statement identifying information to be deleted from public inspection

.02 The text of a technical advice memorandum is open to public inspection under § 6110(a). The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired ("deletions statement"). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 9.05 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the technical advice request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the technical advice memorandum is issued, additional deletions statements may be submitted.

The deletions statement must not appear in the request for technical advice but, instead, must be made in a separate document.

The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Transmittal Form 4463, Request for Technical Advice

.03 The district or appeals office should use Form 4463, Request for Technical Advice, for transmitting a request for technical advice to the national office using the addresses listed below.

Address to send requests from district offices

Internal Revenue Service
Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Address to send requests from appeals offices

Internal Revenue Service
Attn: C:AP:FS
Box 68
901 D Street, S.W.
Washington, DC 20024

Number of copies of request to be submitted

.04 The district or appeals office must submit: (1) two copies of the request for technical advice to the national office; and (2) one copy of the request for technical advice to the Issue or Industry Specialist if the request involves a designated issue or industry under the Industry Specialization Program.

Power of attorney

.05 Any authorized representative, as described in section 8.01(11) of Rev. Proc. 96-1, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 C.F.R. part 10 (1995)) and with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-509 (1995)). It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to requests for technical advice under this revenue procedure.

SECTION 9. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for technical advice, the district or appeals office will notify the taxpayer that technical advice is being requested and will give the taxpayer a copy of the arguments that were provided to the national office in support of the Service's position, except as noted in section 9.07 of this revenue procedure.

If the examining officer or appeals officer initiates the request for technical advice, he or she will give the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to the national office.

Conference offered

.02 When notifying the taxpayer that technical advice is being requested, the examining officer or appeals officer will also tell the taxpayer about the right to a conference in the national office if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.03 If the examining officer or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to indicate in writing any disagreement. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach an agreement on the facts and the specific points at issue before the matter is referred to the national office. If an agreement cannot be reached, the district or appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office. Both the statements of the taxpayer and the district or appeals office will be forwarded to the national office with the request for technical advice.

When the district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling should be modified or revoked, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the district or appeals office.

If a request for technical advice involves the issue of whether a letter ruling should be modified or revoked, the national office will issue technical advice.

If the Service disagrees with the taxpayer's statement of facts

.04 If the taxpayer initiates the request for technical advice and the taxpayer's statement of the facts and issues is not wholly acceptable to the district or appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

If an agreement cannot be reached, both the statements of the taxpayer and the district or appeals office will be forwarded to the national office with the request for technical advice. When the disagreement involves material facts essential to the preliminary assessment of the case, the district director or the chief, appeals office, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the district director or the chief, appeals office, submits a case involving a disagreement of the material facts, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, the national office will base its advice on the facts provided by the district or appeals office.

If the taxpayer has not submitted the required deletions statement

.05 When the district or appeals office initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to the national office to provide the deletions statement required under § 6110(c). *See* section 8.02 of this revenue procedure. If the taxpayer does not submit the deletions statement, the district director or the chief, appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for technical advice and does not submit a deletions statement with the request, the district director or the chief, appeals office, will ask the taxpayer to submit the statement. If the district director or the chief, appeals office, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the district director or the chief, appeals office, may decline to submit the request for technical advice.

However, if the district director or the chief, appeals office, decides to request technical advice, whether initiated by the district or appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, the national office will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Section 6104 of the Internal Revenue Code (Applications for exemption and letter rulings issued to certain exempt organizations open to public inspection)

.06 The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums before public inspection is allowed do not apply to requests for any documents to the extent that § 6104 applies.

Criminal or civil fraud cases

.07 The provisions of this section (about referring issues upon the taxpayer's request, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in the national office) do not apply to a technical advice memorandum described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the technical advice memorandum is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose the technical advice memorandum under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

SECTION 10. HOW DOES A TAXPAYER APPEAL A DISTRICT DIRECTOR OR CHIEF, APPEALS OFFICE, DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek technical advice

.01 If the examining officer or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for technical advice does not warrant referral, the examining officer or appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because the national office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the district or appeals office on the matter.

Taxpayer may appeal decision not to seek technical advice

.02 The taxpayer may appeal the decision of the examining officer or appeals officer not to request technical advice. To do so, the taxpayer must submit to that official, within 10 calendar days after being told of the decision, a statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to the national office for technical advice. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, examination division, or the chief, appeals office.

Chief, examination division, or chief, appeals office, determines whether technical advice will be sought

.03 The examining officer or appeals officer submits the taxpayer's statement through channels to the chief, examination division, or the chief, appeals office, along with the examining officer's or appeals officer's statement of why the issue should not be referred to the national office. The chief determines on the basis of the statements whether technical advice will be requested.

If the chief determines that technical advice is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the chief of agreement or disagreement with the proposed denial.

Chief's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the chief, examination division, or the chief, appeals office, not to request technical advice from the national office. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals, as appropriate.

The Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals, as appropriate, will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The Assistant Commissioner (Examination), the Assistant Commissioner (International), or the National Director of Appeals may consult with the national office, if necessary, and will notify the district office or appeals office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed denial is approved or disapproved. The district office or appeals office will then notify the taxpayer.

While the matter is being reviewed, the district office or appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure in regard to review of the proposed denial of a request for technical advice continue to be applicable in those situations in which the authority normally exercised by the district director or chief, appeals office, has been delegated to another official.

SECTION 11. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?

Taxpayer notified

.01 Once a request for technical advice has been sent to the national office, only a district director or a chief, appeals office, may withdraw a request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum for the technical advice is signed.

The district director or the chief, appeals office, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice except—

(1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period; or

(2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for technical advice should be withdrawn, the procedures in section 10 of this revenue procedure must be followed.

National office may provide views

.02 When a request for technical advice is withdrawn, the national office may send its views to the district director or the chief, appeals office, when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request should be sent to the appropriate appeals office, through the National Director of Appeals, C:AP:FS. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 12. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse technical advice proposed

.01 If, after the technical advice request is analyzed, it appears that technical advice adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

Normally held within 21 days of contact with the taxpayer

.02 The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. The national office will notify the examining officer or appeals officer of the scheduled conference and will offer the examining officer or appeals officer the opportunity to attend the conference. The Assistant Commissioner (Examination), the Assistant Commissioner (International), the National Director of Appeals, the district director, or the chief, appeals office, may designate other Service representatives to attend the conference in lieu of, or in addition to, the examining officer or appeals officer.

21-day period will be extended if justified and approved

.03 An extension of the 21-day period will be granted only if the taxpayer justifies it in writing and the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned approves it. The request for extension should be submitted before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the national office should be told orally before the end of the period about the problem and about the forthcoming written request for extension. The taxpayer will be told promptly (and later in writing) of the approval or denial of a requested extension.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of an extension request. If the national office is not advised of problems with meeting the 21-day period or if the written request is not sent promptly after the national office is notified of problems with meeting the 21-day period, the case will be processed on the basis of the existing record.

Entitled to one conference of right

.05 A taxpayer is entitled by right to only one conference in the national office unless one of the circumstances discussed in section 12.09 of this revenue procedure exists. This conference is normally held at the branch level. It is attended by a person who has authority to sign the transmittal memorandum (discussed in section 14.14 of this revenue procedure) on behalf of the branch chief.

When more than one branch has taken an adverse position on an issue in the request or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign for the branch chief will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes a conference for each subject.

To have a thorough and informed discussion of the issues, the conference usually is held after the branch has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a branch to an assistant chief counsel or to any other Service official. But see section 12.09 of this revenue procedure for situations in which the Service may offer additional conferences.

Conference may not be taped

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Conference may be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentatively adverse determination, the branch representatives may offer the taxpayer the option of delaying the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 17 of this revenue procedure). In these cases, the Service will schedule a conference on the tentatively adverse decision and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues and the reasons for it.

If the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the Service representative will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding the outcome of the § 7805(b) issue or on any other issue discussed.

Additional conferences may be offered

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent the national office from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the branch level, if national office personnel think they are necessary. Such conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 12.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch level. Section 12.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 Within 21 calendar days after the conference, the taxpayer must furnish to the national office any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 14.11(1) of this revenue procedure.

The taxpayer must also send a copy of the additional information to the district director or the chief, appeals office, for comment. Any comments by the district director or the chief, appeals office, must be furnished promptly to the appropriate branch in the national office. If the district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

If the additional information would have a significant impact on the facts in the request for technical advice, the national office will ask the district director or the chief, appeals office, for comment on the facts contained in the additional information submitted. The district director or the chief, appeals office, will give the additional information prompt attention.

If the additional information is not received within 21 days, the technical advice memorandum will be issued on the basis of the existing record.

An extension of the 21-day period may be granted only if the taxpayer justifies it in writing and the branch chief, senior technician reviewer (or senior technical reviewer), or the assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned approves the extension. The procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 12.03 and 12.04 of this revenue procedure.

May, under limited circumstances, schedule a conference to be held by telephone

.11 Infrequently, taxpayers request that their conference of right be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief,

senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

In accordance with section 12.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to participate in the telephone conference. Section 12.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

SECTION 13. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer or the taxpayer's representative may request status

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the district or appeals office that requested the technical advice. See section 14.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative. See section 15.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

District director or chief, appeals office, may request status

.02 The district or appeals office will be given status updates on the technical advice request once a month by the branch representative or branch chief assigned to the request. In addition, a district director or a chief, appeals office, may get current information on the status of the request for technical advice by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request for technical advice.

See section 14.10 of this revenue procedure about discussing the final conclusions with the district or appeals office. Further, the district director or the chief, appeals office, will be notified at the time the technical advice memorandum is mailed.

SECTION 14. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?

Delegates authority to branch chiefs

.01 The authority to issue technical advice on issues under the jurisdiction of the Associate Chief Counsel (Domestic) has largely been delegated to the branch chiefs in the offices of the Assistant Chief Counsel (Corporate), the Assistant Chief Counsel (Financial Institutions and Products), the Assistant Chief Counsel (Income Tax and Accounting), and the Assistant Chief Counsel (Passthroughs and Special Industries).

The branch chiefs in the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) and in the Office of Associate Chief Counsel (International) have largely been delegated the authority to issue technical advice on issues under their jurisdiction.

The authority to issue technical advice on issues under the jurisdiction of the Associate Chief Counsel (Enforcement Litigation) has largely been delegated to the branch chiefs in the office of the Assistant Chief Counsel (General Litigation).

Determines whether request has been properly made

.02 Requests for technical advice generally are given priority and processed expeditiously. As soon as the request for technical advice is assigned, the branch representative analyzes the file to see whether it meets all requirements of sections 6 through 8 of this revenue procedure.

However, if the request does not comply with the requirements of section 8.02 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 9.05 of this revenue procedure.

Contacts the district or appeals office to discuss issues

.03 Usually, within 21 calendar days after the branch receives the request for technical advice, a representative of the branch telephones the district or appeals office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.

Determines whether any matters in the request should be referred to another branch

.04 If the technical advice request concerns matters within the jurisdiction of more than one branch, a representative of the branch that received the original technical advice request informs the district or appeals office within 21 calendar days of receiving the request that—

(1) the matters within the jurisdiction of another branch have been referred to the other branch or office for consideration; and

(2) a representative of the other branch or office will contact the district or appeals office about the technical advice request within 21 calendar days after receiving it in accordance with section 14.03 of this revenue procedure.

Informs the district or appeals office if additional information is needed

.05 The branch representative will inform the district or appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the district or appeals office and the taxpayer. Cases should also be returned if major procedural problems cannot be resolved by telephone.

If only minor procedural deficiencies exist, the branch representative will request the additional information in the most expeditious manner without returning the case. Within 21 calendar days after receiving the information requested, the branch representative will notify the district or appeals office of the tentative conclusion and an estimated date by which the technical advice memorandum will be mailed, or an estimated date when a tentative conclusion will be made.

Gives tentative conclusion

.06 If all necessary information has been provided, the branch representative informs the district or appeals office of the tentative conclusion and the estimated date that the technical advice memorandum will be mailed.

If a tentative conclusion has not been reached, gives date estimated for tentative conclusion

.07 If a tentative conclusion has not been reached because of the complexity of the issue, the branch representative informs the district or appeals office of the estimated date the tentative conclusion will be made.

Advise the district or appeals office if tentative conclusion is changed

.08 Because the branch representative's tentative conclusion may change during the preparation and review of the technical advice memorandum, the tentative conclusion should not be considered final. If the tentative conclusion is changed, the branch representative will inform the district or appeals office.

Discussion with the taxpayer regarding tentative conclusion

.09 Neither the national office nor the district or appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion during consideration of the request for technical advice. However, in order to afford taxpayers an appropriate opportunity to prepare and present their position, the taxpayer or the taxpayer's representative should be told the tentative conclusion when scheduling the adverse conference, at the adverse conference, or in any discussion between the scheduling and commencement of the adverse conference. See section 15.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

Advise the district or appeals office of final conclusions

.10 In all cases, the branch representative will inform the examining officer or appeals officer of the national office's final conclusions. The examining officer or appeals officer will be offered the opportunity to discuss the issues and the national office's final conclusions before the technical advice memorandum is issued.

If additional information is requested

.11 If, following the initial contact referenced in section 14.03 of this revenue procedure, it is determined, after discussion with the branch chief or reviewer, that additional information is needed, a branch representative will obtain the additional information from the taxpayer or from the district director or the chief, appeals office, in the most expeditious manner possible. Any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.

(1) Penalties of perjury statement. Additional information submitted to the national office must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and to the best of my knowledge and belief, the facts represented are true, correct, and complete."** This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.

(2) 21-day period will be extended if justified and approved. A written request for an extension of time to submit additional information must be received by the national office within the 21-day period, giving compelling facts and circumstances to justify the proposed extension. The branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief) of the branch to which the case is assigned will determine whether to grant or deny the request for an extension of the 21-day period. There is no right to appeal the denial of an extension request.

(3) If the taxpayer does not submit additional information. If the national office does not receive the additional information within the period of 21 days, plus any extensions granted by the branch chief, senior technician reviewer (or senior technical reviewer), or assistant to the branch chief (or assistant branch chief), the national office will issue the technical advice memorandum based on the existing record.

Additional information sent to the national office and copy sent to the district director or chief, appeals office

.12 Whether or not requested by the Service, any additional information submitted by the taxpayer should be sent to the national office.

Also, the taxpayer must send a copy to the district director or the chief, appeals office, for comment. Any comments by the district director or the chief, appeals office, must be furnished promptly to the appropriate branch in the national office. If the district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

Informs the taxpayer when requested deletions will not be made

.13 Generally, before replying to the request for technical advice, the national office informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or arguments supporting the taxpayer's proposed deletions.

The Service attempts, if possible, to resolve all disagreements about proposed deletions before the national office replies to the request for technical advice. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the technical advice memorandum. These matters, however, may be considered at any conference otherwise scheduled for the request. See section 15.04 of this revenue procedure for the procedures to protest the disclosure of information in the technical advice memorandum.

Prepares reply in two parts

.14 The replies to technical advice requests are in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum (Form M-6000). In unusual cases, it is a way of giving the district or appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the technical advice memorandum, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;
- (3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;
- (4) a discussion of the rationale supporting the conclusions reached by the national office; and

(5) the conclusions of the national office. The conclusions give direct answers, whenever possible, to the specific issues raised by the district or appeals office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the district or appeals office and may reframe the issues to be answered in the technical advice memorandum. The discussion of the issues will be in sufficient detail so that the district or appeals officials will understand the reasoning underlying the conclusion.

Accompanying the technical advice memorandum is a notice under § 6110(f)(1) of intention to disclose a technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.15 Replies to requests for technical advice are addressed to the district director or the chief, appeals office. Replies to requests from appeals should be routed to the appropriate appeals office through the National Director of Appeals, C:AP:FS.

SECTION 15. HOW DOES A DISTRICT OR APPEALS OFFICE USE THE TECHNICAL ADVICE?

Generally applies advice in processing the taxpayer's case

.01 The district director or the chief, appeals office, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

(1) the district director or the chief, appeals office, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered; or

(2) in the case of technical advice unfavorable to the taxpayer, the chief, appeals office, decides to settle the issue under existing authority.

Discussion with the taxpayer

.02 The national office will not discuss the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the district or appeals office. See section 14.09 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer or the taxpayer's representative.

Gives copy to the taxpayer

.03 The district director or the chief, appeals office, only after adopting the technical advice, gives the taxpayer—

(1) a copy of the technical advice memorandum described in section 14.14 of this revenue procedure; and

(2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to technical advice memorandums involving criminal or civil fraud investigations, or jeopardy or termination assessments, as described in section 9.07 of this revenue procedure.

Taxpayer may protest deletions not made

.04 After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection with brackets around the deletions proposed by the taxpayer that have not been made by the national office.

Generally, the national office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the national office reply is sent to the district director or the chief, appeals office. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the national office must mail to the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.05 In those cases in which the national office tells the district director or the chief, appeals office, that a copy of the technical advice memorandum should not be given to the taxpayer, the district director or the chief, appeals office, will tell the taxpayer that no copy will be given if the taxpayer requests a copy.

SECTION 16. WHAT IS THE EFFECT OF TECHNICAL ADVICE?

Applies only to the taxpayer for whom technical advice was requested

Usually applies retroactively

Generally applied retroactively to modify or revoke prior technical advice

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

Applies to continuing action or series of actions until material facts change

Not applied retroactively under certain conditions

.01 A taxpayer may not rely on a technical advice memorandum issued by the Service for another taxpayer. *See* § 6110(j)(3).

.02 Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively.

Moreover, because technical advice, as described in section 2 of this revenue procedure, is issued only on closed transactions, a holding that is adverse to the taxpayer is also applied retroactively, unless the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, exercises the discretionary authority under § 7805(b) to limit the retroactive effect of the holding.

.03 A holding that modifies or revokes a holding in a prior technical advice memorandum is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions.

.04 If a technical advice memorandum relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by the enactment of legislation, the ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a technical advice memorandum.

.05 A taxpayer is not protected against retroactive modification or revocation of a technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum if—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or technical advice memorandum was based;
- (3) there has been no change in the applicable law;
- (4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and
- (5) the taxpayer directly involved in the letter ruling or technical advice memorandum acted in good faith in relying on the letter ruling or technical advice memorandum, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling or technical advice memorandum on the reorganization of a corporation. However, the tax liability of a member of an industry is not directly involved in a letter ruling or technical advice memorandum issued to another member and, therefore, the holding in a modification or revocation of a letter ruling or technical advice memorandum to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or technical advice memorandum previously issued to another client.

When a letter ruling to a taxpayer or a technical advice memorandum involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer,

except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

SECTION 17. HOW MAY RETROACTIVE EFFECT BE LIMITED?

Taxpayer may request that retroactivity be limited

.01 Under § 7805(b), the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as the Commissioner's delegate, may prescribe the extent, if any, to which a technical advice memorandum will be applied without retroactive effect.

A taxpayer for whom a technical advice memorandum was issued or for whom a technical advice request is pending may request that the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International), as appropriate, limit the retroactive effect of any holding in the technical advice memorandum or of any subsequent modification or revocation of the technical advice memorandum.

Examples of when the taxpayer may request to limit retroactivity

.02 For example, a taxpayer may request the national office to exercise the authority under § 7805(b) to limit retroactivity if—

(1) a technical advice memorandum that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations;

(2) during the course of an examination of the taxpayer's return by the district director or during consideration by the chief, appeals office, a taxpayer is informed that the district director or the chief, appeals office, will recommend that a technical advice memorandum, letter ruling, or determination letter be modified or revoked; or

(3) a holding in a technical advice memorandum does not modify or revoke a prior technical advice memorandum. When germane to a pending technical advice request, a request to limit the retroactive effect of the holding should be made as part of that pending technical advice request, either initially or at any time before the technical advice memorandum is issued by the national office. The national office will consider a request to limit the retroactive effect of the holding even if the request is not made before the technical advice memorandum is issued. However, taxpayers are strongly encouraged to request the application of § 7805(b) early during the consideration of the technical advice request by the national office.

Form of request to limit retroactivity for a continuing transaction—before examination

.03 A request to limit the retroactive effect of the modification or revocation of a technical advice memorandum that concerns a continuing transaction, as described in section 17.02(1) of this revenue procedure, must be made in the form of a request for a letter ruling if the request is submitted before examination of the return that contains the transaction that is the subject of the request for the letter ruling. The requirements for a letter ruling request are given in sections 8 and 11.11 of Rev. Proc. 96-1.

Form of request to limit retroactivity—in all other cases

.04 In all other cases, a taxpayer's request to limit retroactivity must be made in the form of a request for technical advice.

The request must meet the general requirements of a technical advice request, which are given in sections 6 through 8 of this revenue procedure. The request must also—

(1) state that it is being made under § 7805(b);

(2) state the relief sought;

(3) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 16.06 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(4) include any documents bearing on the request.

The taxpayer's request, including the statement that the request is being made under § 7805(b), must be submitted to the district director or the chief, appeals office, who must then forward the request to the national office for consideration.

Taxpayer's right to a conference

.05 When a request for technical advice concerns only the application of § 7805(b), the taxpayer has the right to a conference in the national office in accordance with the provisions of section 12 of this revenue procedure. In accordance with section 12.02 of this revenue procedure, the examining officer or appeals officer will be offered the opportunity to attend the conference on the § 7805(b) issue. Section 12.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

If the request for application of § 7805(b) is included in the request for technical advice on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending technical advice request after a conference has been held on the substantive issues and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 18. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 95-2?

.01 Section 1 is amended to clarify that any reference to chief, examination division, includes, when appropriate, the chief, employee plans/exempt organizations division.

.02 Because the Service and the taxpayer cannot consent under § 6501(c)(4) to extend the period of limitations for assessment of estate taxes, sections 2 and 7.02 are amended to provide that if a case is docketed for an estate tax issue of a taxpayer while a request for technical advice on the same issue of the same taxpayer is pending, the national office may issue the technical advice memorandum if the appropriate appeals officer and counsel for the Government agree, by memorandum, to the issuance of the technical advice memorandum.

.03 Section 7.03 is amended to provide that the district or appeals office's decision whether to request technical advice should not be influenced by the fact that the issue is raised late in the examination or appeals process.

.04 Sections 8.02 and 14.11(1) are amended to clarify that a stamped signature is not permitted on, respectively, a deletions statement and a penalties of perjury statement.

.05 Section 8.04 is redesignated as section 8.05 in this revenue procedure.

.06 New section 8.04 is added to provide that the district or appeals office must submit: (1) two copies of the request for technical advice to the national office; and (2) one copy of the request for technical advice to the Issue or Industry Specialist if the request involves a designated issue or industry under the Industry Specialization Program.

.07 Section 9.03 is amended to provide that the option of not issuing technical advice by the national office applies when the district director or chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling should be modified or revoked. If a technical advice request involves the issue of whether a letter ruling should be modified or revoked, the national office will issue technical advice.

.08 Section 12.02 is amended to clarify that the examining officer or appeals officer will be offered the opportunity to attend the taxpayer's conference of right.

.09 Section 12.09 is amended to clarify that the examining officer or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch level.

Rev. Proc. 95-2, 1995-1 C.B. 365, is superseded.

SECTION 19. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

SECTION 20. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 2, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Reed of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure for matters under the jurisdiction of—

(1) the Associate Chief Counsel (Domestic) or the Associate Chief Counsel (Employee Benefits and Exempt Organizations), contact Ms. Reed at (202) 622-3110 (not a toll-free call);

(2) the Associate Chief Counsel (International), contact Gerard Traficanti at (202) 622-3830 (not a toll-free call);

(3) the Associate Chief Counsel (Enforcement Litigation), contact Peter J. Devlin at (202) 622-3600 (not a toll-free call);

(4) the Assistant Commissioner (Examination), contact Susan Blake at (202) 622-3664 (not a toll-free call); or

(5) the National Director of Appeals, contact Pam Robinson at (202) 401-4169 (not a toll-free call).

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Rev. Proc. 96-3

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 95-3, 1995-1 C.B. 385, as amplified and modified by subsequent revenue procedures, by providing a revised list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Domestic) and the Associate Chief Counsel (Employee Benefits and Exempt Organizations) relating to issues on which the Internal Revenue Service will not issue advance letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue advance letter rulings or determination letters, see Rev. Proc. 96-7, this Bulletin. For a list of areas under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) relating to issues, plans or plan amendments on which the Service will not issue letter rulings and determination letters, see, respectively, section 8 of Rev. Proc. 96-4, this Bulletin, and section 3.02 of Rev. Proc. 96-6, this Bulletin.

.02 Changes

(1) Old section 4.01(21), dealing with § 302(b)(4) and (e), has been clarified. It now specifically states that this ordinarily no-rule area does not apply to partial liquidations that qualify as § 302(e)(2) business terminations.

(2) New sections 4.02(2) and (3) have been added to incorporate provisions contained in section 7.03 of Rev. Proc. 96-1, this Bulletin, dealing with integrated transactions and interrelated items or sub-methods of accounting.

(3) New section 5.05, dealing with § 104, has been added to the under study no-rule area to indicate that the Service will not rule as to whether amounts received are excludable from gross income under § 104(a)(2) in situations affected by *Commissioner v. Schleier*, 515 U.S. — (1995), 115 S. Ct. 2159. See Notice 95-45, 1995-34 I.R.B. 20.

(4) Old section 5.14, dealing with certain aspects of the interrelationship between § 368(a)(1)(B) or § 351(a) and

§ 368(a)(1)(A) and (a)(2)(E), has been deleted. See preamble to T.D. 8648 published in the Federal Register on December 21, 1995 (60 Fed. Reg. 66077).

(5) New section 5.23, dealing with § 2601, has been added to the under study no-rule area to indicate that the Service will not rule as to whether a trust that is excepted from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its excepted status if it is moved to a situs outside the United States. See Rev. Proc. 95-50, 1995-50 I.R.B. 16.

(6) Old section 6.02, dealing with § 446, has been revised to include method of accounting changes for (i) certain banks in the Eighth Circuit seeking to change to the cash method for stated interest on certain short-term loans; (ii) certain small resellers, formerly small resellers, or reseller-producers changing their method of accounting for costs subject to § 263A; (iii) certain taxpayers on a simplified production or simplified resale method of accounting for fewer than 3 taxable years electing an historic absorption ratio under § 263A; (iv) certain taxpayers changing their method of accounting for interest costs subject to § 263A; and, in some situations, certain taxpayers seeking to use an alternative method under § 461(h) for the inclusion of common improvement costs in basis. See Notice 95-57, 1995-45 I.R.B. 12; and Rev. Procs. 95-33, 1995-28 I.R.B. 7; 95-25, 1995-1 C.B. 701; 95-19, 1995-1 C.B. 664; and 92-29, 1992-1 C.B. 748. Also, this section has been updated by deleting references to Rev. Procs. 84-28, 1984-1 C.B. 475, and 84-27, 1984-1 C.B. 469.

SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background

Whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws.

There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue

advance rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which advance rulings and determinations will not be issued. Section 4 sets forth those areas in which they will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Those sections reflect a number of specific questions and problems as well as general areas. Section 5 lists specific areas for which the Service is temporarily not issuing advance rulings and determinations because those matters are under extensive study. Finally, section 6 of this revenue procedure lists specific areas where the Service will not ordinarily issue advance rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 96-1, page 8, this Bulletin, particularly section 7 captioned "Under What Circumstances Does the Service Have Discretion to Issue Letter Rulings and Determination Letters?" for general instructions and other situations in which the Service will not or ordinarily will not issue letter rulings or determination letters.

With respect to the items listed, revenue rulings or revenue procedures may be published in the Internal Revenue Bulletin from time to time to provide general guidelines regarding the position of the Service.

Additions or deletions to this revenue procedure as well as restatements of items listed will be made by modification of this revenue procedure. Changes will be published as they occur throughout the year and will be incorporated annually in a new revenue procedure published as the third revenue procedure of the year. These lists should not be considered all-inclusive. Decisions not to rule on individual cases (as contrasted with those that present significant pattern issues) are not reported in this revenue procedure and will not be added to subsequent revisions.

.02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the national office from the Office of a District Director of the Internal Revenue or a Chief, Appeals Office.

SECTION 3. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific questions and problems.

(1) Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether a group insurance plan for 10 or more employees qualifies as group-term insurance, if the amount of insurance is not computed under a formula that would meet the requirements of § 1.79-1(c)(2)(ii) of the Income Tax Regulations if the group consisted of fewer than 10 employees.

(2) Section 83.—Property Transferred in Connection with Performance of Services.—Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also, whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.

(3) Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether, following a determination that a self-insured medical expense reimbursement plan is discriminatory, that plan had previously made reasonable efforts to comply with tax anti-discrimination rules.

(4) Section 117.—Qualified Scholarships.—Whether an employer-related scholarship or fellowship grant is excludible from the employee's gross income, if there is no intermediary private foundation distributing the grants, as there was in Rev. Proc. 76-47, 1976-2 C.B. 670.

(5) Section 119.—Meals or Lodging Furnished for the Convenience of the Employer.—Whether the value of meals or lodging is excludible from gross income by an employee who is a controlling shareholder of the employer.

(6) Sections 121 and 1034.—One-Time Exclusion of Gain from Sale of Principal Residence by Individual Who Has Attained Age 55; Rollover of Gain on Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(7) Section 125.—Cafeteria Plans.—Whether amounts used to provide group-term life insurance under § 79, accident and health benefits under §§ 105 and 106, and dependent care assistance programs under § 129 are includible in the gross income of

participants and considered "wages" for purposes of §§ 3401, 3121, and 3306 when the benefits are offered through a cafeteria plan.

(8) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(9) Section 163.—Interest.—The income tax consequences of transactions involving "shared appreciation mortgage" (SAM) loans in which a taxpayer, borrowing money to purchase real property, pays a fixed rate of interest on the mortgage loan below the prevailing market rate and will also pay the lender a percentage of the appreciation in value of the real property upon termination of the mortgage. This applies to all SAM arrangements where the loan proceeds are used for commercial or business activities, or where used to finance a personal residence, if the facts are not similar to those described in Rev. Rul. 83-51, 1983-1 C.B. 48. (Also §§ 61, 451, 461, 856, 1001, and 7701.)

(10) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.

(11) Section 213.—Medical, Dental, Etc., Expenses.—Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer's spouse or dependent, or is related directly to such medical care.

(12) Section 264(b).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether "substantially all" the premiums of a contract of insurance are paid within a period of 4 years from the date on which the contract is purchased. Also, whether an amount deposited is in payment of a "substantial number" of future premiums on such a contract.

(13) Section 264(c)(1).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(c)(1) applies.

(14) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether an acquisition is within the meaning of § 269.

(15) Section 274.—Disallowance of Certain Entertainment, Etc., Expenses.—Whether a taxpayer who is traveling away from home on business may, in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for meal expenses that differs from the amount prescribed in Rev. Proc. 89-67, 1989-2 C.B. 795 (prior to January 1, 1991), in Rev. Proc. 90-60, 1990-2 C.B. 651 (after December 31, 1990, and prior to March 1, 1992), in Rev. Proc. 92-17, 1992-1 C.B. 679 (on or after March 1, 1992, and prior to March 12, 1993), in Rev. Proc. 93-21, 1993-1 C.B. 529 (on or after March 12, 1993, and prior to January 1, 1994), in Rev. Proc. 93-50, 1993-2 C.B. 586 (on or after January 1, 1994, and prior to January 1, 1995), or in Rev. Proc. 94-77 1994-2 C.B. 825 (on or after January 1, 1995).

(16) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation consists entirely or partly of its notes payable, and the shareholder's stock is held in escrow or as security for payment of the notes with the possibility that the stock may or will be returned to the shareholder in the future, upon the happening of specific defaults by the corporation.

(17) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation in exchange for a shareholder's stock consists entirely or partly of the corporation's promise to pay an amount based on, or contingent on, future earnings of the corporation, when the promise to pay is contingent on working capital being maintained at a certain level, or any other similar contingency.

(18) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies to a redemption of stock, if after the redemption the distributing corporation uses property that is owned by the shareholder from whom the stock is redeemed and the payments by the corporation for the use of the property are dependent upon the corporation's future earnings or are subordinate to the claims of the corporation's general creditors. Payments for the use of property will not be considered to be dependent upon future earnings merely because they are based on a fixed percentage of receipts or sales.

(19) Section 302.—Distributions in Redemption of Stock.—Whether the acquisition or disposition of stock described in § 302(c)(2)(B) has, or does not have, as one of its principal purposes the avoidance of federal income taxes within the meaning of that section, unless the facts and circumstances are materially identical to those set forth in Rev. Rul. 85-19, 1985-1 C.B. 94, Rev. Rul. 79-67, 1979-1 C.B. 128, Rev. Rul. 77-293, 1977-2 C.B. 91, Rev. Rul. 57-387, 1957-2 C.B. 225, Rev. Rul. 56-584, 1956-2 C.B. 179, or Rev. Rul. 56-556, 1956-2 C.B. 177.

(20) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—The amount of working capital attributable to a business or portion of a business terminated that may be distributed in partial liquidation.

(21) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(22) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to an exchange of stock for stock in the formation of a holding company, and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if such an exchange qualifies under both § 351 and another corporate restructuring provision and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 351. A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling for such an exchange under any such other provision must, accordingly, state to the best of knowledge and belief that the exchange does not qualify under § 351.

The Service will not rule on the qualification of an exchange of stock under § 351, even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to

determine the tax consequences of the larger transaction without making a determination with regard to the exchange of stock. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the exchange will (or will not) qualify under § 351. If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the exchange qualifies under § 351.

SUBISSUES: Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 351. However, the Service will only rule on these subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

To obtain a ruling on a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by the authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 351 if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. *See* section 10.14 of Rev. Proc. 96-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 351.

COLLATERAL ISSUES: Although the Service will not rule on the consequences of qualification of an exchange of stock for stock in the formation of a holding company under § 351 if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue

Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the exchange qualifies under § 351, set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the exchange in question qualifies under § 351.

The Service will also continue to rule on issues that arise in connection with an exchange of stock for stock in the formation of a holding company but do not depend upon or affect qualification under § 351.

(23) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—The determination of whether the corporate business purpose requirement of § 1.355-2(b) is satisfied in the following situations:

(i) If the reduction of non-federal taxes is substantially coextensive with the reduction of federal taxes.

(ii) If a transaction has the potential of avoiding federal taxes but has another corporate business purpose, whether the non-avoidance purpose is the "substantial" motivation for the transaction.

(iii) If the stated purpose of the transaction is to reduce foreign taxes.

(24) Section 368(a)(1)(A).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A), including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E), and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if a transaction qualifies under both § 368(a)(1)(A) and another corporate restructuring provision and the other provision is not covered by this reve-

nue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(A). A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling under any such other provision must, accordingly, state to the best of knowledge and belief that the transaction does not qualify under § 368(a)(1)(A). The Service will continue to rule on transactions that qualify under § 368(a)(1)(G), even if they are also defined in § 368(a)(1)(A).

The Service will not rule on the qualification of a reorganization under § 368(a)(1)(A), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the reorganization. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the reorganization will (or will not) qualify under § 368(a)(1)(A). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(A). For example, the Service will not rule on whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A), even if the larger transaction also involves the issue of whether a prior distribution of stock in a subsidiary containing assets unwanted by the acquiring corporation qualifies under § 355. *See* Rev. Rul. 78-251, 1978-1 C.B. 89. However, in such event, if the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the merger qualifies under § 368(a)(1)(A), the Service will rule as to whether the prior stock distribution qualifies under § 355. Such ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(A).

SUBISSUES: Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether the transaction qualifies under § 368(a)(1)(A) (including transactions qualifying by

reason of § 368(a)(2)(D) or § 368(a)(2)(E)). However, the Service will only rule on such subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on such a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by these authorities. The taxpayer or the taxpayer's representative (as the Service deems appropriate) will also be required to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 368(a)(1)(A), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. *See* section 10.14, Rev. Proc. 96-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 368(a)(1)(A).

COLLATERAL ISSUES: Although the Service will not rule on the consequences of qualification as a reorganization under § 368(a)(1)(A) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. For example, the Service will issue a § 381(c)(4) ruling in connection with a § 368(a)(1)(A) reorganization. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the transaction qualifies under § 368(a)(1)(A), set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 368(a)(1)(A).

The Service will also continue to rule on issues that arise in connection with a transaction under § 368(a)(1)(A)

but do not depend upon or affect qualification under § 368(a)(1)(A).

(25) Section 368(a)(1)(B).—Definitions Relating to Corporate Reorganizations.—Whether the acquisition of stock in the formation of a holding company constitutes a corporate reorganization within the meaning of § 368(a)(1)(B), and whether the taxpayer is subject to the consequence of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if such an acquisition of stock qualifies under both § 368(a)(1)(B) and another corporate restructuring provision, and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(B). A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling for such an acquisition under any such other provision must, accordingly, state to the best of knowledge and belief that the acquisition does not qualify under § 368(a)(1)(B).

The Service will not rule on the qualification of an acquisition of stock under § 368(a)(1)(B), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the acquisition. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the acquisition will (or will not) qualify under § 368(a)(1)(B). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the acquisition qualifies under § 368(a)(1)(B).

SUBISSUES: Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 368(a)(1)(B). However, the

Service will only rule on these sub-issues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by these authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the acquisition will (or will not) qualify under § 368(a)(1)(B), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. See section 10.14, Rev. Proc. 96-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed on whether the acquisition in question qualifies under § 368(a)(1)(B).

COLLATERAL ISSUES: Although the Service will not rule on the consequence of qualification of an acquisition of stock in the formation of a holding company under § 368(a)(1)(B) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the acquisition qualifies under § 368(a)(1)(B), set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the acquisition in question qualifies under § 368(a)(1)(B).

The Service will also continue to rule on issues that arise in connection with an acquisition of stock in the formation of a holding company but do

not depend upon or affect qualification under § 368(a)(1)(B).

(26) Section 368(a)(1)(B).—Definitions Relating to Corporate Reorganizations.—The acceptability of an estimation procedure or the acceptability of a specific sampling procedure to determine the basis of stock acquired by an acquiring corporation in a reorganization described in § 368(a)(1)(B).

(27) Section 368(a)(1)(E).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a corporate recapitalization within the meaning of § 368(a)(1)(E) (or a transaction that also qualifies under § 1036) when either (i) the transaction involves a closely held corporation or (ii) the issues involved are substantially similar to those described in the following revenue rulings:

Rev. Rul. 82-34, 1982-1 C.B. 59 (continuity of business enterprise);

Rev. Rul. 77-479, 1977-2 C.B. 119 (continuity of shareholder interest);

Rev. Rul. 77-238, 1977-2 C.B. 115 (conversion of shares of one class of stock into shares of another class, as permitted by certificate of incorporation);

Rev. Rul. 74-269, 1974-1 C.B. 87 (major shareholder's exchange of common stock for preferred stock);

Rev. Rul. 56-654, 1956-2 C.B. 216 (corporate charter amended to provide preferred stock with increased redemption and liquidation value, where common and preferred stock held pro rata);

Rev. Rul. 55-112, 1955-1 C.B. 344 (common stock exchanged for preferred stock); and

Rev. Rul. 54-482, 1954-2 C.B. 148 (old common stock exchanged for new common stock).

The above no-ruling area does not apply, however, to any corporate recapitalization that is an integral part of a larger transaction, if it is impossible to determine the tax consequences of the larger transaction without making a determination with regard to the recapitalization.

(28) Section 368(a)(1)(F).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a reorganization within the meaning of § 368(a)(1)(F), and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and

basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if a transaction qualifies under both § 368(a)(1)(F) and another corporate restructuring provision, and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(F). A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling under any such other provision must, accordingly, state to the best of knowledge and belief that the transaction does not qualify under § 368(a)(1)(F).

The Service will not rule on the qualification of a reorganization under § 368(a)(1)(F), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the reorganization. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the reorganization will (or will not) qualify under § 368(a)(1)(F). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(F).

SUBISSUES: Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 368(a)(1)(F). However, the Service will only rule on such subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on such a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the

subissue, and explain why the subissue is not resolved by these authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 368(a)(1)(F), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. See section 10.14, Rev. Proc. 96-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed on whether the transaction in question qualifies under § 368(a)(1)(F).

COLLATERAL ISSUES: Although the Service will not rule on the consequences of qualification as a reorganization under § 368(a)(1)(F) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the transaction qualifies under § 368(a)(1)(F), set forth the authorities most closely related to the collateral issue and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 368(a)(1)(F).

The Service will also continue to rule on issues that arise in connection with a transaction under § 368(a)(1)(F) but do not depend upon or affect qualification under § 368(a)(1)(F).

(29) Section 425.—Substitution or Assumption of Incentive Stock Options.—Whether the substitution of a new Incentive Stock Option ("ISO") for an old ISO, or the assumption of an old ISO, by an employer by reason of a corporate transaction constitutes a modification which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 425(a)(1) or the ratio test requirement of § 1.425-1(a)(4). The Service will continue to rule on the issue of whether

the new ISO or the assumption of the old ISO gives the employee additional benefits not present under the old option within the meaning of § 425(a)(2).

(30) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a non-qualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(31) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of unfunded deferred-compensation arrangements where the arrangements fail to meet the requirements of Rev. Proc. 92-65, 1992-2 C.B. 428, and Rev. Proc. 71-19, 1971-1 C.B. 698.

(32) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax consequences to unidentified independent contractors in nonqualified unfunded deferred-compensation plans. This applies to plans established under § 451 by employers in the private sector and to plans of state and local governments and tax-exempt organizations under § 457. However, a ruling with respect to a specific independent contractor's participation in such a plan may be issued.

(33) Section 641.—Imposition of Tax.—Whether the period of administration or settlement of an estate or a trust (other than a trust described in § 664) is reasonable or unduly prolonged.

(34) Section 642(c).—Deduction for Amounts Paid or Permanently Set Aside for a Charitable Purpose.—Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that the corpus of the trust or estate may be invaded.

(35) Section 664.—Charitable Remainder Trusts.—Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.

(36) Section 704(e).—Family Partnerships.—Matters relating to the validity of a family partnership when capital is not a material income producing factor.

(37) Section 856.—Definition of Real Estate Investment Trust.—Whether a corporation whose stock is

"paired" with or "stapled" to stock of another corporation will qualify as a real estate investment trust under § 856, if the activities of the corporations are integrated.

(38) Section 1034.—See section 3.01(6), above.

(39) Section 1221.—Capital Asset Defined.—Whether specialty stock allocated to an investment account by a registered specialist on a national securities exchange is a capital asset.

(40) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

(41) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(42) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(43) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor. A ruling with regard to prior employment status may be issued.

(44) Section 4980B.—Failure to Satisfy Continuation Coverage Requirements of Group Health Plans.—Whether an action is "gross misconduct" within the meaning of § 4980B(f)(3)(B). (See section 3.05 of Rev. Proc. 87-28, 1987-1 C.B. 770, 771.)

(45) Section 7701.—Definitions.—Whether a foreign arrangement that is a participant in a domestic arrangement classified as a partnership for United States tax purposes will itself be classified as a partnership.

(46) Section 7701.—Definitions.—The classification of an instrument that has certain voting and liquidations rights in an issuing corporation but whose dividend rights are determined by reference to the earnings of a segregated portion of the issuing corporation's assets, including assets held by a subsidiary.

.02 General Areas.

(1) The results of transactions that lack a bona fide business purpose or have as their principal purpose the reduction of federal taxes.

(2) A matter upon which a court decision adverse to the Government has

been handed down and the question of following the decision or litigating further has not yet been resolved.

(3) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(4) A matter involving the federal tax consequences of any proposed federal, state, local or municipal legislation. The Service may provide general information in response to an inquiry.

(5) Whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist.

(6) Whether a proposed transaction would subject the taxpayer to a criminal penalty.

(7) A request that does not comply with the provisions of Rev. Proc. 96-1.

(8) Whether, under the common law rules applicable in determining the employer-employee relationship, a professional staffing corporation (loan-out corporation) or the subscriber is the employer of individuals, if:

(i) the loan-out corporation hires employees of the subscriber and assigns the employees back to the subscriber, or

(ii) the loan-out corporation assigns individuals to subscribers for more than a temporary period (1 year or longer).

SECTION 4. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific questions and problems.

(1) Sections 38, 39, 46, and 48.—General Business Credit; Carryback and Carryforward of Unused Credits; Amount of Credit; Energy Credit; Reforestation Credit.—Application of these sections where the formal ownership of property is in a party other than the taxpayer, except when title is held merely as security.

(2) Section 61.—Gross Income Defined.—Determination as to who is the true owner of property in cases involving the sale of securities, or participation interests therein, where the purchaser has the contractual right to cause the securities, or participation interests therein, to be purchased by either the seller or a third party.

(3) Sections 61 and 163.—Gross Income Defined; Interest.—Determi-

nations as to who is the true owner of property or the true borrower of money in cases in which the formal ownership of the property, or the liability for the indebtedness, is in another party.

(4) Section 103.—Interest on State and Local Bonds.—Whether the interest on state or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the state or local bonds prior to their expenditure.

(5) Section 103.—Interest on State and Local Bonds.—Whether a state or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89-5, 1989-1 C.B. 774, is an “arbitrage bond” within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired nonpurpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in § 1.103-13(a)(2)(ii)(E).

(6) Section 141.—Private Activity Bond; Qualified Bond.—With respect to requests made pursuant to Rev. Proc. 88-33, 1988-1 C.B. 835, whether state or local bonds will meet the “private business use test” and the “private security or payment test” under § 141(b)(1) and (2) in situations in which the proceeds are used to finance certain output facilities and, pursuant to a contract to take, or take or pay for, a nongovernmental person purchases 30 percent or more of the actual output of the facility but 10 percent or less of the subparagraph (5) output of the facility as defined in § 1.103-7(b)(5)(ii)(b) (issued under former § 103(b)). In similar situations, the Service will not ordinarily issue rulings or determination letters concerning questions arising under paragraphs (3), (4), and (5) of § 141(b).

(7) Sections 142 and 144.—Exempt Facility Bond; Qualified Small Issue Bond.—Whether an issue of private activity bonds meets the requirements of § 142 or § 144(a), if the sum of—

(i) the portion of the proceeds used to finance a facility in which an owner (or a related person) or a lessee (or a related person) is a user of the facility

both after the bonds are issued and at any time before the bonds were issued, and

(ii) the portion used to pay issuance costs and non-qualified costs, equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(8) Section 148.—Arbitrage.—Whether amounts received as proceeds from the sale of municipal bond financed property and pledged to the payment of debt service or pledged as collateral for the municipal bond issue are sinking fund proceeds within the meaning of § 1.103-13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(9) Section 162.—Trade or Business Expenses.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining the deductibility under § 162 of amounts paid (premiums) by a taxpayer for insurance, unless the facts of the transaction are within the scope of Rev. Rul. 78-338, 1978-2 C.B. 107, or Rev. Rul. 77-316, 1977-2 C.B. 53.

(10) Sections 162 and 262.—Trade or Business Expenses; Personal, Living, and Family Expenses.—Whether expenses are nondeductible commuting expenses, except for situations governed by Rev. Rul. 90-23, 1990-1 C.B. 28.

(11) Section 163.—See section 4.01(3), above.

(12) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(13) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections where the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(14) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable contribution deduction under § 170(f)(2)(A).

(15) Section 170(c).—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the

property transferred and leased back as a charitable contribution.

(16) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 170(f)(2)(A).

(17) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—If a cooperative housing corporation (CHC), as defined in § 216(b)(1), transfers an interest in real property to a corporation (not a CHC) in exchange for stock or securities of the transferee corporation, which engages in commercial activity with respect to the real property interest transferred, whether (i) the income of the transferee corporation derived from the commercial activity, and (ii) any cash or property (attributable to the real property interest transferred) distributed by the transferee corporation to the CHC will be considered as gross income of the CHC for the purpose of determining whether 80 percent or more of the gross income of the CHC is derived from tenant-stockholders within the meaning of § 216(b)(1)(D).

(18) Section 262.—See section 4.01(10), above.

(19) Section 265(a)(2).—Expenses and Interest Relating to Tax-Exempt Income.—Whether indebtedness is incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by subtitle A.

(20) Section 302.—Distributions in Redemption of Stock.—The tax effect of the redemption of stock for notes, when the payments on the notes are to be made over a period in excess of 15 years from the date of issuance of such notes.

(21) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a distribution will qualify as a distribution in partial liquidation under § 302(b)(4) and (e)(1)(A), unless it results in a 20 percent or greater reduction in (i) gross revenue, (ii) net fair market value of assets, and (iii) employees. (Partial liquidations that qualify as § 302(e)(2) business terminations are not subject to this provision.)

(22) Sections 302(b)(4) and (e), 331, 332, and § 346(a).—Effects on Recipients of Distributions in Corporate Liquidations.—The tax effect of the liquidation of a corporation preceded or followed by the reincorporation of all or a part of the business and assets when more than a nominal amount of the stock (that is, more than 20 percent in value) of both the liquidating corporation and the transferee corporation is owned by the same shareholders; or when a liquidation is followed by the sale of the corporate assets by the shareholders to another corporation in which such shareholders own more than a nominal amount of the stock (that is, more than 20 percent in value).

(23) Section 306.—Dispositions of Certain Stock.—Whether the distribution or disposition or redemption of “section 306 stock” in a closely held corporation is in pursuance of a plan having as one of its principal purposes the avoidance of federal income taxes within the meaning of § 306(b)(4).

(24) Sections 331 and 332.—See section 4.01(22), above.

(25) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations.—The tax effect of the liquidation of a corporation by a series of distributions, when the distributions in liquidation are to be made over a period in excess of 3 years from the adoption of the plan of liquidation.

(26) Section 341.—Collapsible Corporations.—Whether a corporation will be considered to be a “collapsible corporation,” that is, whether it was “formed or availed of” with the view of certain tax consequences. However, ruling requests will be considered on this matter when the enterprise (i) has been in existence for a least 20 years or has clearly demonstrated that it has realized two-thirds of the taxable income to be derived from the manufacturing, constructing, producing, or purchasing of property as stated in § 341(b)(1)(A) and as described in Rev. Rul. 72-48, 1972-1 C.B. 102; (ii) has had an aggregate change in the shareholders’ interests of not more than 10 percent during that period (except for transfers among family members, as defined in § 267(c)(4), or redemptions of stock to pay death taxes pursuant to § 303); and (iii) has conducted substantially the same trade or business during that period. The period referred to in (ii) and (iii) above is the lesser of 20 years of corporate existence or the

period in which the enterprise has realized two-thirds of the taxable income from activities specified in § 341(b)(1)(A).

(27) Section 346(a).—See section 4.01(22), above.

(28) Section 346(a).—See section 4.01(25), above.

(29) Section 351.—Transfer to Corporation Controlled by Transferor.—The tax effect of the transfer when part of the consideration received by the transferors consists of an instrument that is a bond, debenture, or any other evidence of indebtedness of the transferee and a determination as to whether the “indebtedness” is properly classified as debt or equity is required in order to establish that the requirements of § 351 are met.

(30) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of an interest in real property by a cooperative housing corporation (as described in § 216(b)(1)) to a corporation in exchange for stock or securities of the transferee corporation, if the transferee engages in commercial activity with respect to the real property interest transferred.

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when, within the 5-year period described in § 355(b)(2)(B), a distributing corporation acquired control of a controlled corporation as a result of the distributing corporation transferring cash or other liquid or inactive assets to the controlled corporation in a transaction in which gain or loss was not recognized as a result of the transfer meeting the requirements of § 351(a) or § 368(a)(1)(D).

(32) Section 441(i).—Taxable Year of Personal Service Corporations.—Whether the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services within the meaning of § 1.441-4T(d)(1)(ii) of the temporary regulations.

(33) Section 448(d)(2)(A).—Limitation on Use of Cash Method of Accounting; Qualified Personal Service Corporation.—Whether 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services within the meaning of § 1.448-1T(e)(4)(i) of the temporary regulations.

(34) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified deferred compensation arrangement using a grantor trust where the trust fails to meet the requirements of Rev. Proc. 92-64, 1992-2 C.B. 422.

(35) Section 584.—Common Trust Funds.—Whether a common trust fund plan meets the requirements of § 584. (For § 584 plan drafting guidance, see Rev. Proc. 92-51, 1992-1 C.B. 988.)

(36) Section 642.—Special Rules for Credits and Deductions; Pooled Income Fund.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(37) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives satisfies the requirements described in § 664.

(38) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92-64, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(39) Section 816.—Life Insurance Company Defined.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining if a company is an “insurance company” under § 1.801-3(a), unless the facts of the transaction are within the scope of Rev. Rul. 78-338, 1978-2 C.B. 107, or Rev. Rul. 77-316, 1977-2 C.B. 53.

(40) Section 1502.—Regulations.—Whether a parent cooperative housing corporation (as defined in § 216(b)(1)) will be permitted to file a consolidated income tax return with its transferee subsidiary, if the transferee engages in commercial activity with respect to the real property interest transferred to it by the parent.

(41) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2055(e)(2)(A).

(42) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 2055(e)(2)(A).

(43) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2522(c)(2)(A).

(44) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 2522(c)(2)(A).

(45) Section 7701.—Definitions.—Whether what is generally known as a foreign corporation will be classified as a partnership for United States tax purposes, if the taxpayer requests classification as a partnership.

(46) Section 7701.—Definitions.—Whether a foreign partnership will be classified as an association for United States tax purposes, if the taxpayer requests classification as an association.

(47) Section 7701.—Definitions.—Whether a limited partnership lacks the corporate characteristics of limited liability and continuity of life if the limited partnership (i) is formed pursuant to a state limited partnership act that the Service has determined in a revenue ruling is a statute that corresponds to the Uniform Limited Partnership Act, and (ii) meets the other requirements contained in Rev. Proc. 92-88, 1992-2 C.B. 496.

.02 General areas.

(1) Any matter in which the determination requested is primarily one of fact, *e.g.*, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.

(2) Situations where the requested ruling deals with only part of an integrated transaction. Generally, a letter ruling will not be issued on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the Branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction.

(3) Situations where two or more items or sub-methods of accounting are interrelated. If two or more items or sub-methods of accounting are interrelated, ordinarily a letter ruling will not be issued on a change in accounting method involving only one of the items or sub-methods.

(4) The tax effect of any transaction to be consummated at some indefinite future time.

(5) Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business.

(6) The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

(7)(a) Situations where the taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection (a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

SECTION 5. AREAS UNDER EXTENSIVE STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, REVENUE PROCEDURE, REGULATIONS OR OTHERWISE

.01 Section 61.—Gross Income Defined.—Whether amounts voluntarily deferred by a taxpayer under a

deferred-compensation plan maintained by an organization described in § 501 (other than a plan maintained by an eligible employer pursuant to the provisions of § 457) are currently includible in the taxpayer's gross income.

.02 Sections 61 and 162.—Gross Income Defined; Trade or Business Expenses.—The tax consequences with respect to a salary reduction arrangement under which an employee receives and returns salary amounts to the employer. (Also §§ 3121, 3306, and 3401.)

.03 Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether life insurance provided for employees under a “retired lives reserve” plan will be considered group-term insurance. (Also §§ 61, 72, 83, 101, 162, 264, and 641.)

.04 Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

.05 Section 104—Compensation for Injuries or Sickness.—Whether amounts received are excludable from gross income under § 104(a)(2) in situations affected by *Commissioner v. Schleier*, 515 U.S. — (1995), 115 S.Ct. 2159.

.06 Section 105.—Amounts Received Under Accident and Health Plans.—Whether a medical reimbursement plan, funded by employer contributions, containing a provision allowing unused amounts to be carried over and accumulated in an employee's account qualifies as an accident and health plan under § 105.

.07 Section 107.—Rental value of parsonages.—Whether amounts distributed to a retired minister from a pension or annuity plan should be excludible from the minister's gross income as a parsonage allowance under § 107.

.08 Section 162.—See section 5.02, above.

.09 Section 162.—Trade or Business Expenses.—Whether payments paid or accrued by a corporation to an exempt organization as described in § 501(c)(7) or § 501(c)(20) are deductible under § 162.

.10 Section 213.—Medical, Dental, etc., Expenses.—Whether amounts paid for medical insurance (or other medical care) extending substantially beyond the close of the taxable year may be deducted under § 213 in the year of payment, if the conditions of § 213(d)(7) are not satisfied.

.11 Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a deemed surrender of stock as described in Rev. Rul. 90–13, 1990–1 C.B. 65, satisfies the requirements for a redemption, when:

(i) The corporation has outstanding more than one class of stock and there are priorities as to dividend or liquidating distributions or any other differences in stock rights, or

(ii) Either under the terms of the stock or as established contractually, there are outstanding any rights affecting the corporation's stock, such as, but not limited to, warrants, options, convertible securities, shareholder agreements, or rights of first refusal.

.12 Section 306(b)(4).—Transactions Not in Avoidance.—Whether § 306(b)(4) applies to the distribution and disposition or redemption of “section 306 stock” that is subject to mandatory redemption.

.13 Sections 331, 453, and 1239.—The Tax Effects of Installment Sales of Property Between Entities with Common Ownership.—The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corporation or the selling shareholders includes an installment obligation of the purchasing entity.

.14 Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of widely held developed or undeveloped real property or interests therein; widely held oil and gas properties or interests therein; or any similarly held properties or interests to a corporation in exchange for shares of stock of such corporation when (i) the

transfer is the result of solicitation by promoters, brokers, or investment houses, or (ii) the transferee corporation's stock is issued in a form designed to render it readily tradable.

.15 Section 368.—Definitions Relating to Corporate Reorganizations.—The tax consequences under § 368 or other provisions of the Code with respect to a transaction in which one corporation owns stock in a second corporation, the first corporation is not an “80-percent distributee” of the second corporation under § 337(c), and the two corporations are combined.

.16 Section 451.—See section 5.04, above.

.17 Section 453.—See section 5.13, above.

.18 Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.19 Section 721.—Nonrecognition of Gain or Loss on Contribution.—Whether § 721 applies to the contribution of widely held developed or undeveloped real property or interests therein; widely held oil and gas properties or interests therein; or any similarly held properties or interests to a partnership in exchange for an interest in the partnership when (i) the contribution is the result of solicitation by promoters, brokers, or investment houses, or (ii) the interest in the transferee partnership is issued in a form designed to render it readily tradable.

.20 Section 1239.—See section 5.13, above.

.21 Section 2503.—Taxable Gifts.—Whether the transfer of property to a trust will be a gift of a present interest in property when (i) the trust corpus

consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.22 Section 2514.—Powers of Appointment.—If the beneficiaries of a trust permit a power of withdrawal to lapse, whether § 2514(e) will be applicable to each beneficiary in regard to the power when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.23 Section 2601.—Tax Imposed.—Whether a trust that is excepted from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its excepted status if the situs of the trust is changed from the United States to a situs outside of the United States.

.24 Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of an "employee-owner" as defined in § 269A(b)(2).

.25 Section 7701.—Definitions.—The classification of separately tradable instruments that are issued by a corporation as a unit, the components of which collectively contain the attributes of stock.

SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED

.01 Section 442.—Change of Annual Accounting Period.—All situations where the Service has provided an administrative procedure for obtaining a change in annual accounting period. See Rev. Procs. 92-13, 1992-1 C.B. 665 (as modified by Rev. Proc. 94-12, 1994-1 C.B. 565, and as modified and amplified by Rev. Proc. 92-13A, 1992-1 C.B. 668) (certain corporations that have not changed their accounting period within the prior 6 calendar years or other specified time); 87-32, 1987-2 C.B. 396, as modified by Rev. Proc. 92-85, 1992-2 C.B. 490 (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year); 68-41, 1968-2 C.B. 943 (as modified by Rev. Proc. 81-40, 1981-2 C.B. 604) (trusts held by certain fiduciaries needing a workload spread); and 66-50, 1966-2 C.B. 1260 (as modified by Rev. Proc. 81-40) (individual seeking a calendar year).

.02 Section 446.—General Rule for Methods of Accounting.—All situations where the Service has provided an administrative procedure for obtaining a change in method of accounting. See Notice 95-57, 1995-45 I.R.B. 12 (cash method banks in the Eighth Circuit seeking to change to the cash method of accounting for stated interest on short-term loans made in the ordinary course of business; and Rev. Procs. 95-33, 1995-28 I.R.B. 7 (certain small resellers, formerly small resellers, or reseller-producers changing their method of accounting for costs subject to § 263A); 95-25, 1995-1 C.B. 701 (certain taxpayers on a simplified production or simplified resale method of accounting for fewer than 3 taxable years electing an historic absorption ratio under § 263A); 95-19, 1995-1 C.B. 664 (certain taxpayers changing their method of accounting for interest costs subject to § 263A(f)); 94-49, 1994-2 C.B. 705, as modified by Rev. Proc. 95-33 (certain taxpayers changing their method of accounting for costs subject to § 263A); 94-30, 1994-1 C.B. 621 (certain taxpayers changing their method of accounting for *de minimis* original issue discount (OID) on loans acquired before a specified cut-off date); 94-29, 1994-1 C.B. 616 (certain taxpayers seeking to use the

principal-reduction method for *de minimis* OID on certain loans originated by the taxpayer); 94-28, 1994-1 C.B. 614 (certain taxpayers changing their method of accounting for debt instruments issued on or after a specified cut-off date in order to comply with regulations dealing with OID and other related matters); 93-48, 1993-2 C.B. 580 (certain taxpayers required to change their method of accounting for notional principal contracts entered into after December 12, 1993); 93-13, 1993-1 C.B. 482 (certain domestic taxpayers required to change their method of accounting to comply with § 267(a)(3) for deducting amounts owed to related foreign persons); 92-98, 1992-2 C.B. 512 (certain accrual method taxpayers selling multi-year service warranty contracts seeking to elect the service warranty income method); 92-75, 1992-2 C.B. 448 (certain taxpayers, other than those required to use inventories, seeking to change to an accrual method); 92-74, 1992-2 C.B. 442 (certain taxpayers, required to use inventories, seeking to change to an accrual method); 92-67, 1992-2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a constant interest rate election or seeking to make or revoke an election under § 1278(b)); 92-29, 1992-1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for the inclusion of common improvement costs in basis) this no-rule provision, however, does not apply to those situations where Rev. Proc. 92-29 requires the taxpayer to file a ruling request; 91-51, 1991-2 C.B. 779 (certain taxpayers that sell mortgages and retain rights to service the mortgages); 91-49, 1991-2 C.B. 777 (holders of certain mortgages that are stripped bonds); 91-31, 1991-1 C.B. 566, 568, 569 (certain utilities holding customer deposits); 90-63, 1990-2 C.B. 664 (certain taxpayers changing their accounting treatment of package design costs); 90-37, 1990-2 C.B. 361 (certain taxpayers with interest income from short-term loans); 89-46, 1989-2 C.B. 597 (cash basis taxpayers with certain United States savings bonds); 88-15, 1988-1 C.B. 683 (certain taxpayers seeking to discontinue LIFO inventory); 85-8, 1985-1 C.B. 495 (certain taxpayers seeking to change from specific charge-off method to reserve method for bad debts); 84-76, 1984-2

C.B. 751 (taxpayers seeking to treat prepaid subscription income under the provisions of § 455); 84-30, 1984-1 C.B. 482 (taxpayers who used the Rule of 78's for interest on consumer loans); 84-29, 1984-1 C.B. 480 (individual borrowers who reported interest deductions in accordance with the Rule of 78's); and 74-11, 1974-1 C.B. 420 (taxpayers seeking to change their method of depreciation accounting).

.03 Section 461.—General Rule for Taxable Year of Deduction.—All situations where the Service has provided an administrative procedure for making or revoking an election under § 461. *See* Rev. Procs. 92-29, 1992-1 C.B. 748 (dealing with the use of an alternative method for including in basis the estimated cost of certain common improvements in a real estate development); and 92-28, 1992-1 C.B.

745, as amplified by Rev. Proc. 94-32, 1994-1 C.B. 627 (dealing with ratable accrual of real property taxes).

.04 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic inadvertent termination relief under Rev. Proc. 94-23, 1994-1 C.B. 609.

.05 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All situations where the Service has provided an administrative procedure for obtaining waivers or consents on consolidated return issues. *See* Rev. Procs. 90-53, 1990-2 C.B. 636 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); 90-39, 1990-2 C.B. 365 (certain affiliated groups of corporations seeking, for earnings and profits determinations, to

make an election or a change in their method of allocating the group's consolidated federal income tax liability); and 89-56, 1989-2 C.B. 643 (certain affiliated groups of corporations seeking to file a consolidated return where member(s) of the group use a 52-53 week taxable year).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Procs. 95-3 and 95-50 are superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Danbury of the Office of Assistant Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Danbury at (202) 622-7550 (not a toll-free call).

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). It explains the kinds of guidance and the manner in which guidance is requested by taxpayers and provided by the Service. A sample format of a request for a letter ruling is provided in Appendix A.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 95-4?

.01 Section 3.07 is amended to require that taxpayers provide a daytime telephone number in their request for an information letter.

.02 Section 5.04 is revised to state that Rev. Proc. 95-52, 1995-51 I.R.B. 14, restates and extends the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies for an indefinite period. Rev. Proc. 95-52 modifies and supersedes the procedures set forth in Rev. Proc. 92-16, 1992-1 C.B. 673 (as modified by Rev. Proc. 94-19, 1994-1 C.B. 605).

.03 Section 6.01 is amended to add subsection (6) which provides a more detailed listing of the areas under the jurisdiction of Exempt Organizations.

.04 Section 6.02(1) is revised to add §§ 419 and 419A of the Code to areas in which the national office issues letter rulings.

.05 Section 6.02(2) is revised to clarify that Rev. Proc. 91-41 applies only to a waiver of the minimum funding standard, and changes in funding methods and actuarial assumptions under § 412(c)(5) of the Code are added. Reference to changes in the plan year under § 412 has been deleted from this section since that subject is covered in section 6.02(4).

.06 Section 6.02(3) is added to state that a letter ruling can be requested for a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code.

.07 A second paragraph is added to section 7.02 clarifying what a ruling issued by the national office would cover in situations involving continuing transactions.

.08 Section 8.06 has been deleted since the Service now provides some guidance on § 404(k) of the Code.

.09 Section 9.02(11) is amended to add Enrolled Actuary as an authorized representative.

.10 Sections 9.02(9), (10), (12), and (13) are amended to clarify that a stamped signature by the taxpayer or the authorized representative is not permitted when signing a deletions statement, requesting a ruling or determination letter, signing the power of attorney, or signing a penalties of perjury statement.

.11 Section 9.02(13) is amended to provide that a taxpayer who submits additional factual information on several occasions for a request for a letter ruling or determination letter may provide one penalties of perjury declaration subsequent to all submissions that refers to all submissions.

.12 Section 9.02(14) is amended to provide that if two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules of the revenue procedure and additional user fees may apply.

.13 Section 9.02(15) is amended to provide that if more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

.14 Section 10.03 is amended to add references to Rev. Proc. 94-42, 1994-1 C.B. 717, Rev. Proc. 81-44, 1981-2 C.B. 618, Rev. Proc. 79-62, 1979-2 C.B. 576, Rev. Proc. 79-61, 1979-2 C.B. 575, and Rev. Proc. 78-37, 1978-2 C.B. 540, which provide guidance on actuarial issues.

.15 Section 11.04(3) has been amended to add reference to an extension of the 30-day period to submit information after an initial contact under section 11.03.

.16 Section 11.13 is amended to clarify the format of the wordprocessing disk for taxpayers submitting a draft of their letter ruling to the national office.

.17 A new section 11.14 is added stating that, generally before a letter ruling is issued, the branch representative will advise the taxpayer of the Service's final conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request.

.18 The first line of the paragraph following section 12.03(4) has been amended to add a clause advising taxpayers of a change in procedures.

.19 Rev. Proc. 96-6, [insert #], this Bulletin, supersedes Rev. Proc. 93-39, 1993-2 C.B. 513 (with the exception of section 12 relating to modifications to Rev. Proc. 93-12, 1993-1 C.B. 479, and section 13 relating to the extended reliance period) where Rev. Proc. 93-39 is cited in the following sections of this revenue procedure: 3.04; 3.05; 3.06; 5.01; 5.02; 5.03; 6.03; 7.03; 7.08; and 10.03(8). Rev. Proc. 93-9 is superseded by Rev. Proc. 93-39 with the exception of section 4 relating to master and prototype and regional prototype plans.

SECTION 3. IN WHAT FORM IS GUIDANCE PROVIDED BY THE ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS)?

In general

.01 The Service provides guidance in the form of letter rulings, closing agreements, determination letters, opinion letters, notification letters, information letters, revenue rulings, and oral advice.

Letter ruling

.02 A "letter ruling" is a written statement issued to a taxpayer by the Service's national office that interprets and applies the tax laws or any nontax laws applicable to employee benefit plans and exempt organizations to the taxpayer's specific set of facts. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in section 12 of this revenue procedure, unless it is accompanied by a "closing agreement."

Closing agreement

.03 A closing agreement is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 of the Code and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A closing agreement prepared in an office under the responsibility of the Assistant Commissioner (Employee Plans and Exempt Organizations) may be based on a ruling that has been signed by the Commissioner or the Commissioner's delegate that says that a closing agreement will be entered into on the basis of the ruling letter.

A closing agreement may be entered into when it is advantageous to have the matter permanently and conclusively closed, or when a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling.

If, in a single case, a closing agreement is requested for each person in a class of taxpayers, separate agreements are entered into only if the class consists of 25 or fewer taxpayers. However, if the issue and holding are identical for the class and there

are more than 25 taxpayers in the class, a “mass closing agreement” will be entered into with the taxpayer who is authorized by the others to represent the class.

In appropriate cases, a closing agreement may be made with sponsors of national office master and prototype plans and sponsors of regional prototype plans.

Rev. Proc. 94-16, 1994-1 C.B. 576, establishes a voluntary closing agreement program for employee plans matters. The revenue procedure contains a formula for determining monetary sanctions and limits the sanction for employers who voluntarily enter the program.

Key district directors have authority to enter into a closing agreement on employee plans matters, notwithstanding the delegation of authority to the Commissioner’s delegate.

Determination letter

.04 A “determination letter” is a written statement issued by a key district director that applies the principles and precedents previously announced by the national office to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

District directors of key district offices issue determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) of the Code as provided in Rev. Proc. 96-6, page [insert #], this Bulletin, Rev. Proc. 93-10, 1993-1 C.B. 476, Rev. Proc. 93-12, 1993-1 C.B. 479, and Rev. Proc. 93-39, 1993-2 C.B. 513 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

Opinion letter

.05 An “opinion letter” is a written statement issued by the national office to a sponsoring organization as to the acceptability (for purposes of §§ 401 and 501(a) of the Code) of the form of a master or prototype plan and any related trust or custodial account under §§ 401, 403(a), and 501(a) of the Code, or as to the conformance of a prototype trust, custodial account, or individual annuity with the requirements of § 408(a), (b), or (k), as applicable. *See* Rev. Proc. 89-9, 1989-1 C.B. 780, as modified by Rev. Proc. 90-21, 1990-1 C.B. 499, Rev. Proc. 92-41, 1992-1 C.B. 870, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10. *See also* Rev. Proc. 91-44, 1991-2 C.B. 733, and Rev. Proc. 92-38, 1992-1 C.B. 859.

Notification letter

.06 A “notification letter” is a written statement issued by the national office or a key district office, upon request, as to the acceptability (for purposes of §§ 401 and 501(a) of the Code) of the form of a regional prototype plan and any related trust or custodial account. *See* Rev. Proc. 89-13, 1989-1 C.B. 801, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10.

Information letter

.07 An “information letter” is a statement issued either by the national office or by a key district director. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. To the extent resources permit, an information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter. An information letter is advisory only and has no binding effect on the Service.

Revenue ruling

.08 A “revenue ruling” is an interpretation by the Service that has been published in the Internal Revenue Bulletin. It is the conclusion of the Service on how the law is applied to a specific set of facts. Revenue rulings are issued only by the national office and are published for the information and guidance of taxpayers, Service personnel, and other interested parties.

Because each revenue ruling represents the conclusion of the Service regarding the application of law to the entire statement of facts involved, taxpayers, Service personnel, and other concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions, revenue rulings, notices, and announcements. *See* Rev. Proc. 89-14, 1989-1

C.B. 814, which states the objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

Oral guidance

.09

(1) No oral rulings, and no written rulings in response to oral requests.

The Service does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. However, Service employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Service will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings, determination letters, and requests for recognition of exempt status for a particular organization.

(2) Discussion possible on substantive issues.

At the discretion of the Service, and as time permits, substantive issues may also be discussed. However, such a discussion will not be binding on the Service, and cannot be relied on as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Service employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Service employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer's representative ordinarily will be asked whether the oral request for guidance or information relates to a matter pending before another office of the Service.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a taxpayer service representative in a key district office or service center when preparing a return or report. Oral guidance is advisory only, and the Service is not bound to recognize it, for example, in the examination of the taxpayer's return.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not confirmation of the substance of the letter.

Nonbank trustee requests

.10 In order to receive approval to act as a nonbank custodian of plans qualified under § 401(a) of the Code or accounts described in § 403(b)(7) of the Code, and as a nonbank trustee or nonbank custodian for individual retirement arrangements (IRAs) established under § 408(a), (b), or (h), a written application must be filed that demonstrates how the applicant complies with the requirements of § 1.401-12(n)(3) through (6) of the Income Tax Regulations.

The Service must have clear and convincing proof in its files that the requirements of the regulations are met. If there is a requirement that the applicant feels is not applicable, the application must provide clear and convincing proof that such requirement is not germane to the manner in which the applicant will administer any trust. *See* § 1.401-12(n)(7) of the regulations.

The completed application should be sent to:

Internal Revenue Service
Assistant Commissioner (Employee Plans and Exempt Organizations)
Attention: CP:E:EP:T
P.O. Box 14073, Ben Franklin Station
Washington, DC 20044

Section 6.01(4) of Revenue Procedure 96-8, page 190, this Bulletin, imposes a user's fee for anyone applying for approval to become a nonbank trustee or custodian.

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Taxpayers may request letter rulings, information letters and closing agreements on issues within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) under this revenue procedure. The national office issues letter rulings to answer written inquiries of individuals and organizations about their status

for tax purposes and the tax effects of their acts or transactions when appropriate in the interest of sound tax administration.

Taxpayers also may request determination letters within the jurisdiction of the appropriate key district director that relate to Code sections under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). *See* Rev. Proc. 96-6, this Bulletin.

SECTION 5. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Determination letters

.01 The procedures for obtaining determination letters involving §§ 401, 403(a), 409, and 4975(e)(7) of the Code, and the status for exemption of any related trusts or custodial accounts under § 501(a) are contained in Rev. Proc. 96-6, this Bulletin, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

Master and prototype plans

.02 The procedures for obtaining opinion letters for master and prototype plans and any related trusts or custodial accounts under §§ 401(a), 403(a) and 501(a) are contained in Rev. Proc. 89-9, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10. The procedures for obtaining opinion letters for prototype trusts, custodial accounts or annuities under § 408(a) or (b) are contained in Rev. Proc. 87-50, as modified by Rev. Proc. 92-38. The procedures for obtaining opinion letters for prototype trusts under § 408(k) are contained in Rev. Proc. 87-50, as modified by Rev. Proc. 91-44.

Regional prototype plans

.03 The procedures for obtaining notification letters for regional prototype plans under § 401(a) and any related trust or custodial account under § 501, are contained in Rev. Proc. 89-13, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-12, Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure), and supplemented by Rev. Proc. 93-10.

Closing agreement program for defined contribution plans that purchased GICs or GACs

.04 Rev. Proc. 95-52, 1995-51 I.R.B. 14, restates and extends the closing agreement program for defined contribution plans that purchased guaranteed investment contracts (GICs) or group annuity contracts (GACs) from troubled life insurance companies for an indefinite period. Rev. Proc. 95-52 modifies and supersedes the procedures set forth in Rev. Proc. 92-16, 1992-1 C.B. 673 (as modified by Rev. Proc. 94-19, 1994-1 C.B. 605).

Voluntary Compliance Resolution Program

.05 The procedures for obtaining corrections of operational qualification plan defects under the Voluntary Compliance Resolution (VCR) Program are contained in Rev. Proc. 94-62, 1994-2 C.B. 778.

Chief Counsel

.06 The procedures for obtaining rulings, closing agreements, and information letters on issues within the jurisdiction of the Chief Counsel are contained in Rev. Proc. 96-1, this Bulletin, including tax issues involving interpreting or applying the federal tax laws and income tax treaties relating to international transactions.

Alcohol, tobacco, and firearms taxes

.07 The procedures for obtaining letter rulings, etc., that apply to federal alcohol, tobacco, and firearms taxes under subtitle E of the Internal Revenue Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms. (*See* 26 C.F.R. § 601.328 (1995)).

SECTION 6. UNDER WHAT CIRCUMSTANCES DOES THE NATIONAL OFFICE ISSUE LETTER RULINGS?

In exempt organizations matters

.01 In exempt organizations matters, the national office issues letter rulings on proposed transactions and on completed transactions if the request is submitted before the return is filed for the year in which the transaction that is the subject of the request was completed. The national office issues letter rulings involving:

- (1) Organizations exempt from tax under § 501, including private foundations;
- (2) Organizations described in § 170(b)(1)(A) (except clause (v));

- (3) Political organizations described in § 527;
- (4) Trusts described in § 4947(a);
- (5) Welfare benefit plans described in § 4976; and
- (6) Other matters including issues under §§ 501 through 514, 4911, 4912, 4940 through 4948, 4955, 6033, 6104, 6113, and 6115.

In employee plans matters

.02 In employee plans matters, the national office issues letter rulings on proposed transactions and on completed transactions either before or after the return is filed. The national office issues letter rulings involving:

- (1) §§ 72, 101(d), 219, 381(c)(11), 402, 403(b), 404, 412, 414(d), 414(e), 419, 419A, 511 through 514, 4971, 4972, 4973, 4974, 4978, 4979, 4980, and 4980A;
- (2) Waiver of the minimum funding standard (*See Rev. Proc. 94-41, 1994-1 C.B. 711*), and changes in funding methods and actuarial assumptions under § 412(c)(5);
- (3) Whether a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code (*See Rev. Proc. 79-62, 1979-2 C.B. 576*);
- (4) A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust (*See Rev. Proc. 87-27, 1987-1 C.B. 769*);
- (5) The tax consequences of prohibited transactions under §§ 503 and 4975;
- (6) Whether individual retirement accounts established by employers or associations of employees meet the requirements of § 408(c) (*See Rev. Proc. 87-50, as modified by Rev. Proc. 91-44 and Rev. Proc. 92-38*);
- (7) With respect to employee stock ownership plans and tax credit employee stock ownership plans, §§ 409(l), 409(m), and 4975(d)(3). Other subsections of §§ 409 and 4975(e)(7) involve qualification issues within the jurisdiction of the key district offices.
- (8) Where the Assistant Commissioner (Employee Plans and Exempt Organizations) has authority to grant extensions of certain periods of time within which the taxpayer must perform certain transactions (for example, the 90-day period for reinvesting in employer securities under § 1.46-8(e)(10) of the regulations), the taxpayer's request for an extension of such time period must be postmarked (or received, if hand delivered to the national office) no later than the expiration of the original time period. Thus, for example, a request for an extension of the 90-day period under § 1.46-8(e)(10) must be made before the expiration of this period. However, see section 6.04 with respect to elections under § 301.9100-1 of the Procedure and Administration Regulations.

In qualifications matters

.03 The national office ordinarily will not issue letter rulings on matters involving a plan's qualified status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by the key district offices' determination letter program as provided in Rev. Proc. 96-6, this Bulletin, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure). Although the national office will not ordinarily issue rulings on matters involving plan qualification, rulings may be issued where, (1) the taxpayer has demonstrated to the Service's satisfaction that the qualification issue involved is unique and requires immediate guidance, (2) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (3) the Service determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

Request for an extension of time for making an election or for other relief under § 301.9100-1 of the Procedure and Administration Regulations

.04 The national office will consider a request for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations even if submitted after the return covering the issue presented in the § 301.9100-1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by an appeals office. In such a case, the national office will notify the field office that has examination jurisdiction over the taxpayer's return.

Except for those requests pertaining to applications for recognition of exemption, § 301.9100-1 requests, even those submitted after the examination of the taxpayer's

return has begun, are letter ruling requests and therefore should be submitted pursuant to this revenue procedure, and require payment of the applicable user fee, referenced in section 9.02(14) of this revenue procedure. In addition, the taxpayer must submit the information required by Rev. Proc. 92-85, 1992-2 C.B. 490 (as modified by Rev. Proc. 96-1, this Bulletin, and Rev. Proc. 93-28, 1993-2 C.B. 344).

However, an election made pursuant to section 4 of Rev. Proc. 92-85, pertaining to an automatic extension of time under § 301.9100-1 of the Procedure and Administration Regulations, is not a letter ruling and does not require payment of any user fee.

Issuance of a letter ruling before the adoption of regulations

.05 Unless the issue is covered by section 8 of this procedure, a letter ruling may be issued before the adoption of regulations (either temporary or final) that interpret the provisions of any act under the following conditions:

Answer is clear or is reasonably certain

(1) If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

Answer is not reasonably certain

(2) The Service will consider all letter ruling requests and use its best efforts to issue a letter ruling even if the answer does not seem reasonably certain where the issuance of a letter ruling is in the best interest of tax administration.

Issue cannot be readily resolved before regulations are issued

(3) A letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before regulations are issued.

Issues in prior return

.06 The national office ordinarily does not issue rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and that issue—

(1) is being examined by a key district director,

(2) is being considered by an appeals office,

(3) is pending in litigation in a case involving the taxpayer or related taxpayer, or

(4) has been examined by a key district director or considered by an appeals office, and the statutory period of limitation has not expired for either assessment or filing a claim for a refund or a closing agreement covering the issue of liability has not been entered into by a key district director or by an appeals office.

If a return dealing with an issue for a particular year is filed while a request for a ruling on that issue is pending, the national office will issue the ruling unless it is notified by the taxpayer that an examination of that issue or the identical issue on an earlier year's return has been started by a key district director. *See* section 9.05. However, even if an examination has begun, the national office ordinarily will issue the letter ruling if the key district director agrees, by memorandum, to permit the ruling to be issued.

Generally not to business associations or groups

.07 The national office does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that would be appropriately addressed in revenue rulings. *See* Rev. Proc. 89-14, which states objectives of and standards for the publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.

The national office, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

Generally not to foreign governments

.08 The national office does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. Also, the national office does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation.

However, the national office may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure. In addition, the national office may provide general information in response to an inquiry.

SECTION 7. UNDER WHAT CIRCUMSTANCES DO KEY DISTRICT DIRECTORS ISSUE DETERMINATION LETTERS?

Circumstances under which letters are issued by the key district director

.01 Key district directors issue determination letters only if the question presented is specifically answered by a statute, tax treaty, or regulation, or by a conclusion stated in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin.

In general

.02 In employee plans and exempt organizations matters, key district directors issue determination letters in response to taxpayers' written requests on completed transactions that affect returns over which they have examination jurisdiction. However, see section 12.08 of this revenue procedure. A determination letter usually is not issued for a question concerning a return to be filed by the taxpayer if the same question is involved in a return under examination.

In situations involving continuing transactions, such as whether an ongoing activity is an unrelated trade or business, the national office would issue a ruling covering future tax periods and periods for which a return had not yet been filed.

Key district directors do not issue determination letters on the tax consequences of proposed transactions, except as provided in sections 7.03 and 7.04 below.

In employee plans matters

.03 In employee plans matters, key district directors issue determination letters on the qualified status of employee plans under §§ 401, 403(a), 409 and 4975(e)(7), and the exempt status of any related trust under § 501. *See* Rev. Proc. 96-6, this Bulletin, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

In exempt organizations matters

.04 In exempt organizations matters, the key district directors issue determination letters involving:

(1) Qualification for exempt status of organizations described in §§ 501 and 521 to the extent provided in Rev. Proc. 90-27, 1990-1 C.B. 514;

(2) Classification of private foundation status as provided in Rev. Proc. 76-34, 1976-2 C.B. 656;

(3) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(4) Requests for relief under § 301.9100-1 of the Procedure and Administration Regulations in connection with applications for recognition of exemption; and

(5) Advance approval under § 4945 of organizations' grant making procedures whose determination letter requests or applications disclose (or who have otherwise properly disclosed) a grant program or plans to conduct such a program. If questions arise regarding grant-making procedures that cannot be resolved on the basis of law, regulations, a clearly applicable revenue ruling, or other published precedent, the key district director will forward the matter to the national office for technical advice.

Circumstances under which letters are not issued by the key district director

.05 A key district director will not issue a determination letter in response to any request if—

(1) it appears that the taxpayer has directed a similar inquiry to the national office;

(2) the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before an appeals office;

(3) the determination letter is requested by an industry, trade association, or similar group on behalf of individual taxpayers within the group (other than subordinate organizations covered by a group exemption letter); or

(4) the request involves an industry-wide problem.

Under no circumstances will a key district director issue a determination letter unless it is clearly shown that the request concerns a return that has been filed or is required to be filed and over which the key district director has or will have examination jurisdiction.

Requests involving returns already filed

.06 A request received by a key district director on a question concerning a return that is under examination, will be, in general, considered in connection with the examination of the return. If a response is made to the request before the return is examined, it will be considered a tentative finding in any later examination of that return.

Attach a copy of determination letter to taxpayer's return

.07 A taxpayer who, before filing a return, receives a determination letter about any transaction that has been consummated and that is relevant to the return being filed should attach a copy of the determination letter to the return when it is filed.

Review of determination letters

.08 Determination letters issued under sections 7.02 through 7.04 of this revenue procedure are not reviewed by the national office before they are issued. If a taxpayer believes that a determination letter of this type is in error, the taxpayer may ask the key district director to reconsider the matter or to request technical advice from the national office as explained in Rev. Proc. 96-5, also in this Bulletin.

(1) In employee plans matters, the procedures for review of determination letters relating to the qualification of employee plans involving §§ 401 and 403(a) of the Code are provided in Rev. Proc. 96-6, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

(2) In exempt organizations matters, the procedures for the review of determination letters relating to the exemption from federal income tax of certain organizations under §§ 501 and 521 of the Code are provided in Rev. Proc. 90-27.

SEC. 8. UNDER WHAT CIRCUMSTANCES DOES THE SERVICE HAVE DISCRETION TO ISSUE LETTER RULINGS AND DETERMINATION LETTERS?

Ordinarily not in certain areas because of factual nature of the problem

.01 The Service ordinarily will not issue a letter ruling or determination letter in certain areas because of the factual nature of the problem involved or because of other reasons. The Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case.

Instead of issuing a letter ruling or determination letter, the national office or a key district director may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to well-established principles of tax law.

Not on alternative plans or hypothetical situations

.02 A letter ruling or a determination letter will not be issued on alternative plans of proposed transactions or on hypothetical situations.

Ordinarily not on part of an integrated transaction

.03 The national office ordinarily will not issue a letter ruling on only part of an integrated transaction.

Law requires ruling letter

.04 The national office will issue rulings on prospective or future transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

Issues under consideration by PBGC or DOL

.05 A ruling or determination letter relating to an issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, shall be issued at the discretion of the Service.

Cafeteria plans

.06 The Service does not issue ruling letters or determination letters on whether a cafeteria plan satisfies the requirements of § 125 of the Code. *See also* Rev. Proc. 96-3, also in this Bulletin, for areas under the jurisdiction of the Associate Chief Counsel (Domestic) involving cafeteria plans in which advance rulings or determination letters will not be issued.

Determination letters

.07 *See* section 3.02 of Rev. Proc. 96-6 for employee plans matters on which determination letters will not be issued.

Domicile in a foreign jurisdiction

.08

(1) The Service is ordinarily unwilling to rule in situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(2) The provisions of subsection 8.08(1) above shall not apply if the taxpayer or affected related party (a) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (b) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

SECTION 9. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS?

In general

.01 This section explains the general instructions for requesting letter rulings and determination letters on all matters. Requests for letter rulings and determination letters require the payment of the applicable user fee discussed in section 9.02(14) of this revenue procedure.

Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters. Those matters are listed in section 10 of this revenue procedure followed by a reference (usually to another revenue procedure) where more information can be obtained.

Certain information required in all requests

.02

Facts

(1) Complete statement of facts and other information. Each request for a letter ruling or a determination letter must contain a complete statement of all facts relating to the transaction. These facts include—

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties. (The term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization, or all employees where a large number may be involved.);

(b) the location of the key district office that has or will have examination jurisdiction over the return (not the service center where the return is filed);

(c) a complete statement of the business reasons for the transaction; and

(d) a detailed description of the transaction.

The Service will usually not rule on only one step of a larger integrated transaction. See section 8.03 of this revenue procedure. However, if such a letter ruling is requested, the facts, circumstances, true copies of relevant documents, etc., relating to the entire transaction must be submitted.

Documents

(2) Copies of all contracts, wills, deeds, agreements, instruments, plan documents, and other documents. True copies of all contracts, wills, deeds, agreements, instruments, plan documents, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

Each document, other than the request, should be labelled alphabetically and attached to the request in alphabetical order. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the Service's file and will not be returned.

Analysis of material facts

(3) Analysis of material facts. All material facts in documents must be included rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the provisions that apply.

Same issue in an earlier return

(4) Statement regarding whether same issue is in an earlier return. The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267, or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

If the statement is affirmative, it must specify whether the issue—

- (a) is being examined by a key district director;
- (b) has been examined and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (c) has been examined and if so, whether or not a closing agreement covering the issue or liability has been entered into by a key district director;
- (d) is being considered by an appeals office in connection with a return from an earlier period;
- (e) has been considered by an appeals office in connection with a return from an earlier period and if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (f) has been considered by an appeals office in connection with a return from an earlier period and whether or not a closing agreement covering the issue or liability has been entered into by an appeals office;
- (g) is pending in litigation in a case involving the taxpayer or a related taxpayer; or
- (h) in employee plans matters, is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor.

Same or similar issue previously submitted

(5) Statement regarding whether same or similar issue was previously ruled on or requested. The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

- (a) the Service previously ruled on the same or similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor; or
- (b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue to the Service but withdrew it before a letter ruling or determination letter was issued.

If the same or a similar issue was previously submitted, the statement must give the date the request was submitted, withdrawn, or ruled on, and other details of the Service's consideration of the issue.

Statement of authorities supporting taxpayer's views

(6) Statement of supporting authorities. If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must also be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

Statement of authorities contrary to taxpayer's views

(7) Statement of contrary authorities. The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, notices, revenue rulings, revenue procedures or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not

furnish either contrary authority or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

Statement identifying pending legislation

(8) Statement identifying pending legislation. At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a letter ruling or determination letter is issued, the taxpayer must notify the Service.

Deletions statement required by § 6110

(9) Statement identifying information to be deleted from copy of letter ruling or determination letter for public inspection. The text of certain letter rulings and determination letters is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or determination letter must be accompanied by a statement indicating the deletions desired ("deletions statement"). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 30 calendar days. See section 11.03 of this revenue procedure.

Format of deletions statement

(a) A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletion's statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletions statements may be submitted.

Location of deletions statement

(b) The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

Signature

(c) The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

Additional information

(d) The taxpayer should follow the same procedures above to propose deletions from any additional information submitted after the initial request. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants only the same information deleted from the additional information.

Taxpayer may protest deletions not made

(e) After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement within 20 calendar days to the Service office indicated on the notice of intention to disclose. The statement must identify those deletions that the Service has not made, and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

Taxpayer may request delay of public inspection

(f) After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

Section 6110(k)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, letter rulings, determination letters, technical advice memoranda, and related background file documents dealing with the following matters (covered by § 6104) are not subject to § 6110 disclosure provisions—

(i) An application for exemption under § 501(a) as an organization described in § 501(c) or (d), or any application filed with respect to the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account, whether the plan or account has more than 25 or less than 26 participants, or any application for exemption under § 501(a) by an organization forming part of such a plan or account;

(ii) Any document issued by the Internal Revenue Service in which the qualification or exempt status of an organization, plan, or account is granted, denied, or revoked or the portion of any document in which technical advice with respect thereto is given to a key district director;

(iii) Any application filed and any document issued by the Internal Revenue Service with respect to the qualification or status of national office master and prototype plans and regional prototype plans;

(iv) The portion of any document issued by the Internal Revenue Service with respect to the qualification or exempt status of an organization, plan, or account, of a proposed transaction by such organizations, plan, or account; and

(v) Any document issued by the Internal Revenue Service in which is discussed the status of an organization under § 509(a) or § 4942(j)(3), other than one issued to a nonexempt charitable trust described in § 4947(a)(1). This includes documents discussing the termination of private foundation status under § 507.

Signature on request

(10) Signature by taxpayer or authorized representative. The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature is not permitted.

Authorized representatives

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be:

Attorney

(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer;

Certified public accountant

(b) A certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer;

Enrolled agent

(c) An enrolled agent who is a person, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment

card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230 (31 C.F.R. part 10 (1995));

Enrolled actuary

(d) An enrolled actuary who is a person enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 and qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions: §§ 401, 403(a), 404, 405, 412, 413, 414, 4971, 6057, 6058, 6059, 6652(e), 6652(f), 6692, 7805(b), and 29 U.S.C. 1083;

Sponsor of regional prototype plan

(e) Certain individuals, partnerships or corporations may sponsor regional prototype plans according to the procedures of Rev. Proc. 89-13. *See* section 4 of Rev. Proc. 89-13; or

A person with a "Letter of Authorization"

(f) Any other person, including a foreign representative who has received a "Letter of Authorization" from the Director of Practice under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a "Letter of Authorization" to: Office of Director of Practice, HR:DP, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Circular No. 230 authorizes the Commissioner to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

Employee, general partner, bona fide officer, administrator, trustee, etc.

The above requirements do not apply to a regular full-time employee representing his or her employer, to a general partner representing his or her partnership, to a bona fide officer representing his or her corporation, association, or organized group, or to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d), (e), or (f) of this section 9.02(11)) who is not a full-time employee, general partner, a bona fide officer, or an administrator, trustee, etc., may not represent a taxpayer in connection with a letter ruling, determination letter or a technical advice request. *See* section 10.7(c) of Treasury Department Circular No. 230.

Foreign representative

A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d), (e) or (f) of this section 9.02(11)) is not authorized to practice before the Service and, therefore, must withdraw from representing a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual's or entity's own behalf or through a person referred to in paragraph (a), (b), (c), (d), (e) or (f) of this section 9.02(11).

Power of attorney and declaration of representative

(12) Power of attorney and declaration of representative. Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-509 (1995)), which provide the rules for representing a taxpayer before the Service.

It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative's authorization (Part I of Form 2848, Power of Attorney) and the representative's qualification (Part II of Form 2848, Declaration of Representative). The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted. For additional information regarding the power of attorney form, see section 9.03(2) of this revenue procedure.

For the requirement regarding compliance with Treasury Department Circular No. 230, see section 9.09 of this revenue procedure.

Penalties of perjury statement

(13) Penalties of perjury statement. A request for a letter ruling or determination letter and any factual information or change in the ruling request submitted at a later time must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the

requested letter ruling or determination letter are true, correct, and complete." A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

Signature by taxpayer

The declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted. The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust or partnership must be a trustee or general partner who has personal knowledge of the facts.

Applicable user fee

(14) Applicable user fee. Section 10511 of the Revenue Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-382, 1330-446, enacted December 22, 1987, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 511, enacted November 5, 1990, and by § 743 of the Uruguay Round Agreements Act, 1995-1 C.B. 230, 239, enacted December 8, 1994, requires taxpayers to pay user fees for requests for rulings, opinion letters, determination letters, and similar requests. Rev. Proc. 96-8, page 00, this Bulletin, contains the schedule of fees for each type of request under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) and provides guidance for administering the user fee requirements. If two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules herein and additional user fees may apply.

Number of copies of request to be submitted

(15) Number of copies of request to be submitted. Generally a taxpayer needs only to submit one copy of the request for a letter ruling or determination letter. If, however, more than one issue is presented in the letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, two copies of the request for a letter ruling or determination letter are required if—

(a) the taxpayer is requesting separate letter rulings or determination letters on different issues as explained later under section 9.03(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as explained in section 9.02(9) of this revenue procedure; or

(c) a closing agreement (as defined in section 3.03 of this revenue procedure) is being requested on the issue presented.

Sample of a letter ruling request

(16) Sample format for a letter ruling request. To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix A. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix A, the different format will neither defer consideration of the letter ruling request nor be cause for returning the request to the taxpayer or taxpayer's representative.

Checklist

(17) Checklist for letter ruling requests. The Service will be able to respond more quickly to a taxpayer's letter ruling request if it is carefully prepared and complete. The checklist in Appendix B of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix B must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. A photocopy of the checklist in this revenue procedure may be used.

Additional information required in certain circumstances

.03

Multiple issues

(1) To request separate letter rulings for multiple issues in a single situation. If more than one issue is presented in a request for a letter ruling, the Service generally will issue a single ruling letter covering all the issues. However, if the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter

ruling is needed sooner than another), the Service will usually comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request.

In issuing each letter ruling, the Service will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

Power of attorney

(2) To designate recipient of original or copy of letter ruling or determination letter. Unless the power of attorney provides otherwise, the Service will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to provide the representative's authorization. *See* section 9.02(12) of this revenue procedure.

Copies of letter ruling or determination letter sent to multiple representatives

(a) To have copies sent to multiple representatives. When a taxpayer has more than one representative, the Service will send the copy of the letter ruling or determination letter to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or determination letter sent to the second representative listed in the power of attorney, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is to be sent to the second representative listed in the power of attorney. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

Original of letter ruling or determination letter sent to taxpayer's representative

(b) To have original sent to taxpayer's representative. A taxpayer may request that the original of the letter ruling or determination letter be sent to the taxpayer's representative. In this case, a copy of the letter ruling or determination letter will be sent to the taxpayer.

If the taxpayer wants the original of the letter ruling or determination letter sent to the taxpayer's representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that the original of the letter ruling or determination letter is to be sent to the taxpayer's representative. When a taxpayer has more than one representative, the Service will send the original of the letter ruling or determination letter to the first representative named in the most recent power of attorney.

No copy of letter ruling or determination letter sent to taxpayer's representative

(c) To have no copy sent to taxpayer's representative. If a taxpayer does not want a copy of the letter ruling or determination letter sent to any representative, the taxpayer must check the appropriate box on Form 2848. If this form is not used, the taxpayer must state in the power of attorney that a copy of the letter ruling or determination letter is not to be sent to any representative.

Expeditious handling

(3) To request expeditious handling. The Service processes requests for letter rulings and determination letters in order of the date received, and as expeditiously as possible. A taxpayer who has a compelling need to have a request processed ahead of the regular order must request expeditious handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling or determination letter. The request must explain the need for expeditious handling.

If the request for expeditious handling is not made in a separate letter, then the letter in which the letter ruling or determination letter request is made should say, at the top of the first page: "**Expeditious Handling Is Requested. See page _____ of this letter.**"

A request for expeditious handling will not be forwarded to a rulings branch for action until the check or money order for the user fee in the correct amount is received.

The Service cannot give assurance that any letter ruling or determination letter will be processed by the time requested. For example, the scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a

transaction will not be a sufficient reason to process a request out of order. Accordingly, the Service urges taxpayers to submit their requests well in advance of the contemplated transaction.

Facsimile (fax) transmission

(4) To receive a letter ruling or determination letter or submit a request for a letter ruling by facsimile transmission. Letter rulings and determination letters ordinarily are not sent by facsimile (fax) transmission. However, if the taxpayer requests, a copy of a letter ruling or determination letter may be faxed to the taxpayer or the taxpayer's authorized representative.

A request to fax a copy of the letter ruling or determination letter to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling or determination letter request or prior to the approval of the letter ruling or determination letter. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

In addition, because of the nature of fax transmission, a statement containing a waiver of any disclosure violations resulting from the fax transmission must accompany the request. Nevertheless, the national office will take certain precautions to protect confidential information. For example, the national office will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted. The cover sheet, if possible, will not identify the specific taxpayer by name, and it will be the first page covering the letter ruling being faxed.

Original letter ruling requests sent by fax are discouraged because such requests must be treated in the same manner as requests by letter. For example, the faxed letter ruling request will not be forwarded to the rulings branch for action until the check for the user fee is received.

Requesting a conference

(5) To request a conference. A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request. *See also* sections 11.05, 11.06, and 12.09(2) of this revenue procedure.

Address to send the request

.04

Requests for letter rulings

(1) Requests for letter rulings should be sent to the following offices (as appropriate):

Employee Plans Division

Internal Revenue Service

Assistant Commissioner (EP/EO)

Attention: CP:E:EP:T

P.O. Box 14073, Ben Franklin Station

Washington, D.C. 20044

Exempt Organizations Division

Internal Revenue Service

Assistant Commissioner (EP/EO)

Attention: CP:E:EO:P:2

P.O. Box 120, Ben Franklin Station

Washington, D.C. 20044

Requests may also be hand delivered to Room 6052, 1111 Constitution Avenue, N.W., Washington, DC between 8:30 a.m. and 4:00 p.m. on work days. After working hours, they may be hand delivered to the drop box at the 12th Street entrance of the same building.

Requests for information letters

(2) Requests for information letters on either exempt organizations matters or employee plans matters should be sent to the Employee Plans Technical Branches or the Exempt Organizations Technical Branches (as appropriate):

Internal Revenue Service

1111 Constitution Avenue, N.W.

Attention: CP:E:EO:P:2, Room 6052

Washington, DC 20224

Requests for determination letters

(3) Requests for determination letters should be sent to the IRS key district director whose office has or will have examination jurisdiction over the taxpayer's return. For fees required with determination letter requests, see section 6.08 of Rev. Proc. 96-8, this Bulletin.

Pending letter ruling requests	.05
Must notify national office if examination of issue begins, consideration by PBGC or DOL starts, or legislation is introduced	<p>The taxpayer must notify the national office if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—</p> <p>(1) an examination of the issue or the identical issue on an earlier year’s return has been started by a key district director;</p> <p>(2) in employee plans matters, the issue is being considered by the Pension Benefit Guaranty Corporation or the Department of Labor; or</p> <p>(3) legislation that may affect the transaction is introduced (<i>see</i> section 9.02(8) of this revenue procedure).</p>
Must notify national office if return is filed and must attach request to return	<p>In addition, if the taxpayer files a return before a letter ruling is received from the national office concerning the issue, the taxpayer must notify the national office that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the key district office and thereby avoid premature district action on the issue.</p>
When to attach letter ruling to return	.06 A taxpayer who receives a letter ruling before filing a return about any transaction that is relevant to the return being filed must attach a copy of the letter ruling to the return when it is filed.
How to check on status of request	.07 The taxpayer or the taxpayer’s authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request.
Request may be withdrawn or the national office may decline to issue ruling	<p>.08 If a taxpayer withdraws a request for a letter ruling or if the national office declines to issue a letter ruling, the national office will notify the appropriate key district director and may give its views on the issues in the request to the appropriate key district director to consider in any later examination of the return. The taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by the Service. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the national office declines to issue a letter ruling will not be returned to the taxpayer (<i>see</i> section 9.02(2) of this revenue procedure). The user fee will not be returned for a request that is withdrawn. In appropriate cases, the Service may publish its conclusions in a revenue ruling or revenue procedure.</p> <p>A request for a ruling will not be suspended in the national office at the request of a taxpayer.</p>
Compliance with Treasury Department Circular No. 230	<p>.09 The taxpayer’s authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations when the national office believes that the taxpayer’s representative is not in compliance with Circular No. 230, the national office will bring the matter to the attention of the Director of Practice.</p> <p>For the requirement regarding compliance with the conference and practice requirements, see section 9.02(12) of this revenue procedure.</p>
SECTION 10. WHAT SPECIFIC, ADDITIONAL PROCEDURES APPLY TO CERTAIN REQUESTS?	
In general	.01 Specific revenue procedures supplement the general instructions for requests explained in section 9 of this revenue procedure and apply to requests for letter rulings or determination letters regarding the Code sections and matters listed in this section.
Exempt Organizations	.02 If the request is for the qualification of an organization for exemption from federal income tax under § 501 or 521, see Rev. Proc. 72–5, 1972–1 C.B. 709, regarding religious and apostolic organizations; Rev. Proc. 80–27, 1980–1 C.B. 677, concerning group exemptions; and Rev. Proc. 90–27 1990–1 C.B. 514, regarding applications for recognition of exemption.
Employee Plans	.03

(1) For requests to obtain approval for a retroactive amendment described in § 412(c)(8) of the Code and § 302(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA) that reduces accrued benefits, see Rev. Proc. 94-42, 1994-1 C.B. 717.

(2) For requests for a waiver of the minimum funding standard, see Rev. Proc. 94-41, 1994-1 C.B. 711.

(3) For requests for a waiver of the 100 percent tax imposed under § 4971(b) of the Code on a pension plan that fails to meet the minimum funding standards of § 412 of the Code, see Rev. Proc. 81-44, 1981-2 C.B. 618.

(4) For requests for a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(f)(2)(A) of the Code, see Rev. Proc. 79-62, 1979-2 C.B. 576.

(5) For requests to obtain approval for an extension of an amortization period of any unfunded liability in accordance with § 412(e) of the Code, see Rev. Proc. 79-61, 1979-2 C.B. 575.

(6) For requests by administrators or sponsors of a defined benefit plan to obtain approval for a change in funding method, see Rev. Proc. 78-37, 1978-2 C.B. 540.

(7) For requests for the return to the employer of certain nondeductible contributions, see Rev. Proc. 90-49, 1990-2 C.B. 620.

(8) For requests for determination letters for plans under §§ 401, 403(a), 409, and 4975(e)(7) of the Code, and for the exempt status of any related trust under § 501, see Rev. Proc. 96-6, Rev. Proc. 93-10, Rev. Proc. 93-12, and Rev. Proc. 93-39 (as superseded in part by Rev. Proc. 96-6; see section 2.19 of this revenue procedure).

SECTION 11. HOW DOES THE NATIONAL OFFICE HANDLE LETTER RULING REQUESTS?

In general

.01 The national office will issue letter rulings on the matters and under the circumstances explained in sections 4 and 6 of this revenue procedure and in the manner explained in this section.

Is not bound by informal opinion expressed

.02 The Service will not be bound by the informal opinion expressed by the branch representative or any other authorized Service representative under this procedure, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b) of the Code.

Tells taxpayer if request lacks essential information during initial contact

.03 If a request for a letter ruling or determination letter does not comply with all the provisions of this revenue procedure, the request will be acknowledged and the Service representative will tell the taxpayer during the initial contact which requirements have not been met.

Information must be submitted within 30 calendar days

If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the branch representative will tell the taxpayer during the initial contact that the request will be closed if the Service does not receive the information within 30 calendar days. *See* section 11.04 of this revenue procedure for instructions on submissions of additional information.

If the information is received after the request is closed, the request will be reopened and treated as a new request as of the date the information is received. However, the taxpayer must pay another user fee before the case can be reopened.

Letter ruling request mistakenly sent to key district director

A request for a letter ruling sent to the key district director that does not comply with the provisions of this revenue procedure will be returned by the key district director so that the taxpayer can make corrections before sending it to the national office.

Requires prompt submission of additional information requested after initial contact

.04 Material facts furnished to the Service by telephone or fax, or orally at a conference, must be promptly confirmed by letter to the Service with a declaration that the information is provided under penalties of perjury in the form described in section 9.02(13) of this revenue procedure. This confirmation and any additional information requested by the Service that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

Encourage use of fax

(1) To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Service representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and a signed perjury statement, however, must be mailed or delivered to the Service.

Address to send additional information

(2) Additional information should be sent to the same address as the original letter ruling request. *See* section 9.04. However, the additional information should include the name, office symbols, and room number of the Service representative who requested the information and the taxpayer's name and the case control number (which the Service representative can provide).

30-day or 21-day period may be extended if justified and approved

(3) An extension of the 30-day period under section 11.03 or the 21-day period under section 11.04, will be granted only if justified in writing by the taxpayer and approved by the branch chief or group manager of the group to which the case is assigned. A request for extension should be submitted before the end of the 30-day or 21-day period. If unusual circumstances close to the end of the 30-day or 21-day period make a written request impractical, the taxpayer should notify the national office within the 30-day or 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly, and later in writing, of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

If taxpayer does not submit additional information

(4) If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand, or, if appropriate, no letter ruling will be issued. When the Service decides not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. **If the Service receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer must pay another user fee before the case can be reopened.**

Schedules a conference if requested by taxpayer

.05 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only when the national office considers it to be helpful in deciding the case or when an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. As stated in section 9.03(5) of this revenue procedure, a taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the request for extension are the same as those explained in section 11.04 of this revenue procedure regarding providing additional information.

Permits taxpayer one conference of right

.06 A taxpayer is entitled, as a matter of right, to only one conference in the national office, except as explained under section 11.09 of this revenue procedure. This conference normally will be held at the branch level and will be attended by a person who, at the time of the conference, has the authority to sign the ruling letter in his or her own name or for the branch chief.

When more than one branch has taken an adverse position on an issue in a letter ruling request, or when the position ultimately adopted by one branch will affect that adopted by another, a representative from each branch with the authority to sign in his or her own name or for the branch chief will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the branch has had an opportunity to study the case. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a branch to the division director or to any other official of the Service. But see section 11.09 of this revenue procedure for situations in which the Service may offer additional conferences.

Disallows verbatim recording of conferences

.07 Since conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Makes tentative recommendations on substantive issues

.08 The senior Service representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. A Service representative explains the Service's tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks the Service to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, a Service representative will discuss the recommendation concerning this issue and the reasons for the recommendation. The Service representatives will not make a commitment regarding the conclusion that the Service will finally adopt.

May offer additional conferences

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference when a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent the Service from offering additional conferences, including conferences with an official higher than the branch level, if the Service decides they are needed. Such conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

Requires written confirmation of information presented at conference

.10 The taxpayer should furnish to the national office any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. *See* section 11.04 of this revenue procedure for instructions on submission of additional information. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of the Service's approval or denial of the requested extension are the same as those stated in section 11.04 of this revenue procedure regarding submitting additional information.

May schedule pre-submission conference

.11 Sometimes it is advantageous to both the Service and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. Such conferences are held only when the taxpayer actually intends to make a request and only on a time-available basis. Generally, the taxpayer will be asked to provide a draft of the letter ruling request or other detailed written description of the proposed transaction before the pre-submission conference.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the branch that held the pre-submission conference.

May, under limited circumstances, schedule a conference to be held by telephone

.12 A taxpayer may request that their conference of right be held by telephone. This may occur, for example, where a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief or group manager will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved by the branch chief or group manager, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

May request draft of proposed letter ruling at the completion of the ruling process

.13 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Service representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of

discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling in order to receive a letter ruling.

The format of the submission should be discussed with the Service representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to include.

Taxpayer may also submit draft on a word processing disk

In addition to a typed draft, taxpayers are encouraged to submit this draft on a disk in either Word Perfect 5.1 or ASCII. The typed draft will become part of the permanent files of the national office, and the word processing disk will not be returned. If the Service representative requesting the draft letter ruling cannot answer specific questions about the format of the word processing disk, the questions can be directed to Alan Pipkin at (202) 622-8400 (Employee Plans), or Wayne Hardesty at (202) 622-7644 (Exempt Organizations) (not toll-free calls).

The proposed letter ruling (both typed draft and word processing disk) should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). *See* section 11.04 of this revenue procedure.

Advises the taxpayer of final conclusions and, if the Service will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request

.14 Generally, before the letter ruling is issued, the branch representative will inform the taxpayer or the taxpayer's authorized representative of the Service's final conclusions. If the Service is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the branch representative of a decision to withdraw the ruling request, the adverse letter will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. *See* section 10 of Rev. Proc. 96-8, this Bulletin.

SECTION 12. WHAT EFFECT WILL A LETTER RULING HAVE?

May be relied on subject to limitations

.01 A taxpayer ordinarily may rely on a letter ruling received from the Service subject to the conditions and limitations described in this section.

Will not apply to another taxpayer

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. *See* § 6110(j)(3).

Will be used by a key district director in examining the taxpayer's return

.03 When determining a taxpayer's liability, the key district director must ascertain whether—

- (1) the conclusions stated in the letter ruling are properly reflected in the return;
- (2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;

(3) the transaction was carried out substantially as proposed; and

(4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

If, when determining the liability, the key district director finds that a letter ruling should be revoked or modified, unless a waiver is obtained from the national office, the findings and recommendations of the key district director will be forwarded to the national office for consideration before further action is taken by the key district director. Such a referral to the national office will be treated as a request for technical advice and the procedures of Rev. Proc. 96-5 will be followed. Otherwise, the letter ruling is to be applied by the key district office in its determination of the taxpayer's liability. Appropriate coordination with the national office will be undertaken if any field official having jurisdiction over a return or other matter proposes to reach a conclusion contrary to a letter ruling previously issued to the taxpayer.

May be revoked or modified if found to be in error

.04 Unless it was part of a closing agreement as described in section 3.03 of this revenue procedure, a letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified due to—

- (1) a notice to the taxpayer to whom the letter ruling was issued;
- (2) the enactment of legislation or ratification of a tax treaty;
- (3) a decision of the United States Supreme Court;
- (4) the issuance of temporary or final regulations; or

(5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn. Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under the procedures in this revenue procedure.

.05 Except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;
- (3) there has been no change in the applicable law;
- (4) the letter ruling was originally issued for a proposed transaction; and

(5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a ruling relating to a qualified plan of an employer is directly involved in such ruling. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

.06 A letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final), if conditions (1) through (5) in section 12.05 of this revenue procedure are met.

However, if a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Service, it will not protect a similar transaction of the taxpayer in the same year or later year.

.07 If a letter ruling is issued covering a continuing action or series of actions, and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Assistant Commissioner (Employee Plans and Exempt Organizations) ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

.08 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a completed transaction other than those described in section 12.07 of this revenue procedure, because the taxpayer did not enter into the transaction relying on a letter ruling.

.09 Under § 7805(b), the Service may prescribe any extent to which a revocation or modification of a letter ruling or determination letter will be applied without retroactive effect.

Not generally revoked or modified retroactively

Retroactive effect of revocation or modification applied only to a particular transaction

Retroactive effect of revocation or modification applied to a continuing action or series of actions

May be retroactively revoked or modified when transaction is completed without reliance on the letter ruling

Taxpayer may request that retroactivity be limited

A taxpayer to whom a letter ruling or determination letter has been issued may request that the Assistant Commissioner (Employee Plans and Exempt Organizations) limit the retroactive effect of any revocation or modification of the letter ruling or determination letter.

Format of request

(1) Request for relief under § 7805(b) must be made in required format.

A request to limit the retroactive effect of the revocation or modification of a letter ruling must be in the general form of, and meet the general requirements for, a letter ruling request. These requirements are given in section 9 of this revenue procedure. Specifically, the request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief requested (including a discussion of the five items listed in section 12.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

A request that the Service limit the retroactive effect of a revocation or modification of a letter ruling may be made in the form of a separate request for a letter ruling when, for example, a revenue ruling has the effect of revoking or modifying a letter ruling previously issued to the taxpayer, or when the Service notifies the taxpayer of a change in position that will have the effect of revoking or modifying the letter ruling. However, when notice is given by the key district director during an examination of the taxpayer's return or by the chief, appeals office, during consideration of the taxpayer's return before an appeals office, a request to limit retroactive effect must be made in the form of a request for technical advice as explained in section 18 of Rev. Proc. 96-5, this Bulletin.

When germane to a pending letter ruling request, a request to limit the retroactive effect of a revocation or modification of a letter ruling may be made as part of the request for the letter ruling, either initially or at any time before the letter ruling is issued. When a letter ruling that concerns a continuing transaction is revoked or modified by, for example, a subsequent revenue ruling, a request to limit retroactive effect must be made before the examination of the return that contains the transaction that is the subject of the letter ruling request.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

A taxpayer who requests the application of § 7805(b) in a separate letter ruling request has the right to a conference in the national office as explained in sections 11.05, 11.06, 11.07, 11.08 and 11.09 of this revenue procedure. If the request is made initially as part of a pending letter ruling request or is made before the conference of right is held on the substantive issues, the § 7805(b) issue will be discussed at the taxpayer's one conference of right as explained in section 11.06 of this revenue procedure. If the request for the application of § 7805(b) relief is made as part of a pending letter ruling request after a conference has been held on the substantive issue and the Service determines that there is justification for having delayed the request, the taxpayer is entitled to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue only.

SECTION 13. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

Has same effect as a letter ruling

.01 A determination letter issued by a key district director has the same effect as a letter ruling issued to a taxpayer under section 12 of this revenue procedure.

If a key district director proposes to reach a conclusion contrary to that expressed in a determination letter, he or she need not refer the matter to the national office as is required for a letter ruling found to be in error. However, the key district director must refer the matter to the national office if the key district director desires to have the revocation or modification of the determination letter limited under § 7805(b).

Taxpayer may request that retroactive effect of revocation or modification be limited

.02 A key district director does not have authority under § 7805(b) to limit the revocation or modification of the determination letter. Therefore, if a key district director proposes to revoke or modify a determination letter, the taxpayer may request limitation of the retroactive effect of the revocation or modification by asking the key district director who issued the determination letter to seek technical advice from the national office. *See* section 18 of Rev. Proc. 96-5, this Bulletin.

Format of request

(1) Request for relief under § 7805(b) of the Code must be made in required format.

A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must be in the form of, and meet the general requirements for, a technical advice request. *See* section 17.06 of Rev. Proc. 96-5, this Bulletin. The request must also—

(a) state that it is being made under § 7805(b);

(b) state the relief sought;

(c) explain the reasons and arguments in support of the relief sought (including a discussion of the five items listed in section 12.05 of this revenue procedure and any other factors as they relate to the taxpayer's particular situation); and

(d) include any documents bearing on the request.

Request for conference

(2) Taxpayer may request a conference on application of § 7805(b).

When technical advice is requested regarding the application of § 7805(b), the taxpayer has the right to a conference in the national office to the same extent as does any taxpayer who is the subject of a technical advice request. *See* section 10 of Rev. Proc. 96-5, this Bulletin.

Exhaustion of administrative remedies

(3) Taxpayer steps in exhausting administrative remedies.

Consideration of relief under § 7805(b) will be included as one of the taxpayer's steps in exhausting administrative remedies only if the taxpayer has requested such relief in the manner described in this revenue procedure. If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted the taxpayer's administrative remedies as required by § 7428(b)(2) and § 7476(b)(3) and will, thus, be precluded from seeking a declaratory judgment under § 7428 or § 7476. Where the taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request.

SECTION 14. UNDER WHAT CIRCUMSTANCES ARE MATTERS REFERRED BETWEEN A KEY DISTRICT OFFICE AND THE NATIONAL OFFICE?

Requests for determination letters

.01 Requests for determination letters received by key district directors that, under the provisions of this revenue procedure, may not be issued by a key district office, will be forwarded to the national office for reply. The key district office will notify the taxpayer that the matter has been referred.

Key district directors will also refer to the national office any request for a determination letter that in their judgement should have the attention of the national office.

No-rule areas

.02 If the request involves an issue on which the Service will not issue a letter ruling or determination letter, the request will not be forwarded to the national office. The key district office will notify the taxpayer that the Service will not issue a letter ruling or a determination letter on the issue. *See* section 8 of this revenue procedure for a description of no-rule areas.

Requests for letter rulings

.03 Requests for letter rulings received by the national office that, under section 6 of this revenue procedure, may not be acted upon by the national office will be forwarded to the key district office that has examination jurisdiction over the taxpayer's return. The taxpayer will be notified of this action. If the request is on an issue or in an area of the type discussed in section 8 of this revenue procedure, and the Service decides not to issue a letter ruling or an information letter, the national office will notify the taxpayer and will then forward the request to the appropriate key district office for association with the related return.

SEC. 15. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 95-4 is superseded.

SEC. 16. EFFECTIVE DATE

This revenue procedure is effective January, 2, 1996.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Dave Flavin of the Exempt Organizations Division and Lynette McCleary of the Employee Plans Division. For further information regarding how this revenue procedure applies to employee plan matters, contact the Employee Plans Division telephone assistance service between the hours of 1:30 and 4:00 p.m., Eastern Time, Monday through Thursday, on (202) 622-6074/75 (not a toll-free call). Mrs. McCleary's telephone number is (202) 622-6214 (not a toll-free call). For exempt organization matters, please contact Mr. Flavin at (202) 622-7922 (not a toll-free call).

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APPENDIX A

SAMPLE FORMAT FOR A LETTER RULING REQUEST

(Insert the date of request)

Internal Revenue Service
Assistant Commissioner (EP/EO)
Attention: CP:E:EP:T
P.O. Box 14073
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

(Insert the name of the taxpayer) (the “Taxpayer”) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under § *(insert the number)* of the Internal Revenue Code.

[If the taxpayer is requesting expeditious handling, the letter ruling request must contain a statement to that effect. This statement must explain the need for expeditious handling. See section 9.03(3).]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 9.02(1)(a), (b), (c), and (d) of Rev. Proc. 96–4, 1996–1 I.R.B. **[insert page #]**. (Hereafter, all references are to Rev. Proc. 96–4 unless otherwise noted.)]

For example, a taxpayer that maintains a qualified employee retirement plan and files an annual Form 5500 series of returns may include the following statement to satisfy sections 9.02(1)(a), (b), (c), and (d):

The Taxpayer is a construction company with principal offices located at 100 Whatever Drive, Wherever, Maryland 12345, and its telephone number is (123) 456-7890. The Taxpayer’s federal employer identification number is 00-1234567. The Taxpayer uses the Form 5500 series of returns on a calendar year basis to report its qualified employee retirement plan and trust.

The key district director of Internal Revenue for the Baltimore, Maryland district has audit jurisdiction over the Taxpayer’s Federal tax returns.

2. Detailed Description of the Transaction.

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 9.02(1)(c), 9.02(1)(d), and 9.02(2).]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer’s views or conclusion, including any authorities believed to be contrary to the position advanced in the ruling request. This statement must also identify any pending legislation that may affect the proposed transaction. See sections 9.02(6), 9.02(7), and 9.02(8).]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. See sections 9.02(3), 9.02(6), 9.02(7), and 9.02(8).]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer’s conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. Rev. Proc. 96–4 Statements

- a. [The statement required by section 9.02(4).]
- b. [The statement required by section 9.02(5).]
- c. [The statement required by section 9.02(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- d. [The statement required by section 9.02(7) when the taxpayer determines that there are no contrary authorities.]
- e. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. See section 9.03(5).]
- f. [If the taxpayer is requesting the letter ruling to be issued by fax, the ruling request should contain a statement to that effect. This statement must also contain a waiver of any disclosure violations resulting from the fax transmission. See section 9.03(4).]
- g. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 9.03(1).]

2. Administrative

- a. A Power of Attorney is enclosed. [See sections 9.02(12) and 9.03(2).]
- b. The deletions statement and checklist required by Rev. Proc. 96-4 are enclosed. [See sections 9.02(9) and 9.02(17).]
- c. The required user fee is enclosed. [See section 9.02(14).]

Very truly yours,

(Insert the name of the taxpayer or the taxpayer's authorized representative)

By:

Signature

Date

Typed or printed name of
person signing request

DECLARATION: [See section 9.02(13).]

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested letter ruling are true, correct, and complete.

(Insert the name of the taxpayer)

By:

Signature

Title

Date

Typed or printed name of
person signing declaration

- Yes No N/A 11. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labelled and attached them in alphabetical sequence? See section 9.02(2).
- Yes No
Page — 12. Have you included, rather than merely by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 9.02(3).
- Yes No
Page — 13. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 9.02(4).
- Yes No
Page — 14. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 9.02(5).
- Yes No
Page — 15. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue but withdrew it before the letter ruling was issued? See section 9.02(5).
- Yes No
Page — 16. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 9.02(6).
- Yes No
Pages — 17. Have you included the required statement of relevant authorities in support of your views? See section 9.02(6).
- Yes No N/A
Pages — 18. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures you determined to be contrary to the position advanced? See section 9.02(7), which states that taxpayers are encouraged to inform the Service of such authorities.
- Yes No N/A
Page — 19. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 9.02(7).
- Yes No N/A
Page — 20. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 9.02(8).
- Yes No 21. Is the request accompanied by the deletions statement required by § 6110? See section 9.02(9).
- Yes No N/A
Page — 22. Have you (or your authorized representative) signed and dated the request? See section 9.02(10).
- Yes No N/A 23. If the request is signed by your representative, or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 9.02(12).
- Yes No N/A
Page — 24. Have you included, signed and dated, the penalties of perjury statement in the form required by section 9.02(13)?
- Yes No N/A 25. Have you included the correct user fee with the request and made your check or money order payable to the Internal Revenue Service? See section 9.02(14) and Rev. Proc. 96-8, page [insert #], this Bulletin, for the correct amount and additional information on user fees.
- Yes No N/A 26. Are you submitting your request in duplicate if necessary? See section 9.02(15).
- Yes No N/A
Pages — 27. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 9.03(1).
- Yes No N/A 28. If you want the original of the ruling to be sent to a representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
- Yes No N/A 29. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 9.03(2).
- Yes No N/A
Page — 30. If you have more than one representative, have you designated whether the second representative listed on the power of attorney is to receive a copy of the letter ruling? See section 9.03(2).
- Yes No N/A 31. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expeditious handling in the form required by section 9.03(3) and stated a compelling need for such action in the request?
- Yes No N/A
Page — 32. If you are requesting that a copy of the letter ruling be issued by facsimile (fax) transmission, have you included a statement containing a waiver of any disclosure violations resulting from the fax transmission? See section 9.03(4).

- Yes No N/A 33. If you want to have a conference on the issues involved in the request, have you included a request for
Page — conference in the ruling request? See section 9.03(5).
- Yes No N/A 34. If your request is covered by any of the guideline revenue procedures or other special requirements
listed in section 10 of Rev. Proc. 96-4, have you complied with all of the requirements of the applicable
revenue procedure?
- Yes No N/A 35. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of
Page — the requirements in section 12.09?
- Yes No N/A 36. Have you addressed your request to the appropriate office listed in section 9.04? Improperly addressed
requests may be delayed (sometimes for over a week) in reaching the appropriate office for initial
processing.

Signature

Title or authority

Date

Typed or printed name of
person signing checklist

Rev. Proc. 96-5

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure explains when and how the Assistant Commissioner (Employee Plans and Exempt Organizations) gives technical advice to a key district director or a chief, appeals office in the employee plans areas (including actuarial matters) and exempt organizations areas. It also explains the rights a taxpayer has when a key district director or a chief, appeals office requests technical advice regarding a tax matter.

The term key district director means the district director of one of the key district offices set forth in Rev. Proc. 96–8, page 187, this Bulletin, and section 20.06 of Rev. Proc. 96–6, page 151, this Bulletin, as updated on Form 8717, User Fee for Employee Plan Determination Letter Request, or Form 8718, User Fee for Exempt Organization Determination Letter Request. The reference in this revenue procedure to the chief, appeals office includes, when appropriate, the Assistant Regional Director of Appeals (Large Case). In addition, any reference to appeals officer includes, when appropriate, the team chief. Finally, any reference to EP/EO means Employee Plans and Exempt Organizations.

SECTION 2. WHAT SIGNIFICANT CHANGES HAVE BEEN MADE TO REV. PROC. 95–5?

.01 Section 8.03 is amended to provide that the key district or appeals office’s decision whether to request technical advice should not be influenced by the fact that the issue is raised late in the determination letter, examination or appeals process.

.02 Sections 9.05 and 15.10 are amended to clarify that a stamped signature is not permitted on, respectively, a deletions statement and a penalties of perjury statement.

.03 A new section 9.07 is added to provide that the key district or appeals office must submit three (3) copies of a technical advice request to the national office.

.04 Section 10.03 is amended to provide that the option of not issuing technical advice by the national office applies when the key district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling or determination letter should be modified or revoked. If a technical advice request involves the issue of whether a letter ruling or determination letter should be modified or revoked, the national office will issue technical advice.

.05 Section 13.09 is amended to clarify that the EP/EO specialist or appeals officer may be offered the opportunity to participate in any additional conference, including a conference with an official higher than the branch level.

SECTION 3. WHAT IS TECHNICAL ADVICE?

“Technical advice” means advice or guidance in the form of a memorandum furnished by the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations), (hereinafter referred to as the “national office”), upon the request of a key district director or a chief, appeals office, submitted in accordance with the provisions of this revenue procedure in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the national office to a specific set of facts. Such proceedings include (1) the examination of a taxpayer’s return, (2) consideration of a taxpayer’s claim for refund or credit, (3) a request for a determination letter, (4) any other matter involving a specific taxpayer under the jurisdiction of the chief, EP/EO division or chief, appeals office, or (5) processing and considering nondocketed cases in an appeals office. However, they do not include cases in which the issue in the case is in a docketed case for any year.

For purposes of technical advice, the word “taxpayer” includes all persons subject to any provision of the Internal Revenue Code (including tax-exempt entities such as governmental units which issue municipal bonds within the meaning of § 103(a)), and when appropriate, their representatives. However, the instructions and the provisions of this revenue procedure do not apply to requests for technical advice involving any matter pertaining to either tax-exempt bonds or mortgage credit certificates. Instead, the procedures under Rev. Proc. 96–2, page 60, this Bulletin must be followed.

Technical advice resolves complex issues and helps establish and maintain consistent holdings throughout the Internal Revenue Service. A key district director or a chief, appeals office, may raise an issue in any tax period, even though technical advice may have been asked and furnished for the same or similar issue for another tax period.

Technical advice does not include legal advice furnished to the key district or appeals office in writing or orally, other than advice furnished pursuant to this revenue procedure. In accordance with section 11.01 of this revenue procedure, a taxpayer’s request for referral of an issue for technical advice will not be denied merely because the national office has provided legal advice, other than advice furnished pursuant to this revenue procedure, to the key district or appeals office on the matter.

SECTION 4. ON WHAT ISSUES MAY OR MUST TECHNICAL ADVICE BE REQUESTED UNDER THIS PROCEDURE?

Issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations)

.01 Generally, the instructions of this revenue procedure apply to requests for technical advice on any issue under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations).

Farmers’ cooperatives

.02 If a key district director, chief, appeals office, or a taxpayer requests technical advice on a determination letter under § 521 of the Code, the procedures under this revenue procedure, Rev. Proc. 90–27, 1990–1 C.B. 514, as modified by Rev. Proc. 96–8, as well as § 601.201(n) of the Statement of Procedural Rules, must be followed.

Basis for requesting technical advice

.03 Requests for technical advice are encouraged on any technical or procedural questions arising in connection with any case of the type described in section 3 at any stage of the proceedings in the key district or appeals office that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

Areas of mandatory technical advice

.04 Requests for § 7805(b) relief are mandatory technical advice with respect to all exempt organizations and employee plans matters.

Except for those exemption application cases handled in the national office in accordance with section 6.02 of Rev. Proc. 90–27, key district and appeals offices are required to request technical advice on their exempt organization cases concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that nonuniformity exists.

Regarding employee plans matters, a request for technical advice is required in cases concerning (1) proposed adverse or proposed revocation letters on collectively-bargained plans, (2) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 1974-3 C.B. 1, 43, (3) amendments to defined contribution plans pursuant to Rev. Proc. 94-41, 1994-1 C.B. 711, in connection with a waiver of the minimum funding standard and a request for a determination letter (*See* section 16 of Rev. Proc. 96-6 and section 3.04 of Rev. Proc. 94-41), (4) termination/reestablishment and spinoff-termination cases in which the key district office proposes that the Implementation Guidelines are not applicable, or (5) a situation in which the employer has had a prior termination/reestablishment or spinoff-termination within 15 years of the time of the transaction.

SECTION 5. ON WHAT ISSUES MUST TECHNICAL ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Matters (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International)

.01 All procedures for obtaining technical advice on issues (other than farmers' cooperatives) under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International) including any matter pertaining to tax-exempt bonds or mortgage credit certificates, § 526 of the Code (shipowners' protection and indemnity associations), § 528 (certain homeowners' associations) and issues involving the interpretation or application of the federal income tax laws and income tax treaties relating to international transactions are contained in Rev. Proc. 96-2.

Alcohol, tobacco, and firearms taxes

.02 Procedures for obtaining technical advice specifically applicable to federal alcohol, tobacco, and firearms taxes under subtitle E of the Code are under the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

Excise taxes

.03 Technical advice procedures regarding excise taxes (other than excise taxes imposed under Chapters 41, 42 and 43 of the Code), and employment taxes that employee plans and exempt organizations are subject to, are set forth in Rev. Proc. 96-2.

SECTION 6. MAY TECHNICAL ADVICE BE REQUESTED FOR A § 301.9100-1 REQUEST DURING THE COURSE OF AN EXAMINATION?

Generally a § 301.9100-1 request is a letter ruling request

.01 Except with regard to exemption application matters involving §§ 505(c) and 508, requests for an extension of time for making an election or other application for relief under § 301.9100-1 of the Procedure and Administration Regulations made after the examination of the taxpayer's return has begun or made after the issues in the return are being considered by an appeals office are letter ruling requests. Therefore, § 301.9100-1 requests should be submitted pursuant to Rev. Proc. 96-4 and require payment of the applicable user fee listed in section 6 of Rev. Proc. 96-8.

Statute of limitations

.02 The running of any applicable period of limitations is not suspended for the period during which a § 301.9100-1 request has been filed. If the period of limitations on an assessment under § 6501(a) for the year for which a timely filed election would have been made or for any affected succeeding year will expire before receipt of a § 301.9100-1 letter ruling, the Service ordinarily will not issue a § 301.9100-1 ruling. *See* section 5.02(2) of Rev. Proc. 92-85, 1992-2 C.B. 490, as modified by Rev. Proc. 93-28, 1993-2 C.B. 344. Therefore, the taxpayer must secure a consent under § 6501(c)(4) to extend the period of limitations on assessment. Note that the filing of a protective claim for refund under § 6511 does not extend the period of limitations on assessment. If § 301.9100-1 relief is granted, the Service may require the taxpayer to consent to an extension of the period of limitations for assessment. *See* section 8.02 of Rev. Proc. 92-85.

Address to send a § 301.9001-1 request

.03 Requests made under § 301.9100-1, pursuant to Rev. Proc. 96-4, together with the appropriate user fee, must be submitted to the Internal Revenue Service by the taxpayer and addressed as follows:

Requests involving employee plans matters:

Internal Revenue Service
Assistant Commissioner (EP/EO) Attn: CP:E:EP:T
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044

Requests involving exempt organization matters:

Internal Revenue Service
Assistant Commissioner (EP/EO) Attn: CP:E:EO
P.O. Box 120
Ben Franklin Station
Washington, D.C. 20044

The package should be marked: RULING REQUEST SUBMISSION. A § 301.9100-1 request may also be hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Ave., N.W., Washington, DC. No receipt will be given at the drop box. See Rev. Proc. 96-8 for the appropriate user fee.

If return is being examined, taxpayer must notify the national office which will notify the key district or appeals office

.04 If the taxpayer's return covering the issue presented in the § 301.9100-1 request is being examined by a key district office or the issues in the return are being considered by an appeals office, the taxpayer must notify the national office. *See*, section 6.04 of Rev. Proc. 96-4. The national office will notify the appropriate key district office or appeals office considering the return that a request for § 301.9100-1 relief has been submitted to the national office. The EP/EO specialist or the appeals officer is not authorized to deny consideration of a request for § 301.9100-1 relief. The letter ruling will be mailed to the taxpayer and a copy will be sent to the appropriate key district office or appeals office.

SECTION 7. WHO IS RESPONSIBLE FOR REQUESTING TECHNICAL ADVICE?

Key district director or chief, appeals office determines whether technical advice should be requested

.01 The key district director or chief, appeals office determines whether to request technical advice on any issue being considered. Each request must be submitted through proper channels and signed by a person who is authorized to sign for the key district director or chief, appeals office. The mandatory technical advice described in section 4.04(3) of this revenue procedure, for cases concerning amendments to defined contribution plans in connection with a waiver of the minimum funding standard and a request for a determination letter, is treated as if it had been a request for technical advice submitted by the key district director. *See* section 16 of Rev. Proc. 96-6 and section 3.04 of Rev. Proc. 94-41 for the procedural rules applicable to this particular mandatory technical advice.

Taxpayer may ask that issue be referred for technical advice

.02 While a case is under the jurisdiction of a key district director or chief, appeals office, a taxpayer may request that an issue be referred to the national office for technical advice.

SECTION 8. WHEN SHOULD TECHNICAL ADVICE BE REQUESTED?

Uniformity of position lacking

.01 Technical advice should be requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by the national office.

When technical advice can be requested

.02 The provisions of this revenue procedure apply only to a case under the jurisdiction of a key district director or chief, appeals office. Technical advice may also be requested on issues considered in a prior appeals disposition, not based on mutual concessions for the same tax period of the same taxpayer, if the appeals office that had the case concurs in the request. A key district director may not request technical advice on an issue if an appeals office is currently considering an identical issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504). A case remains under the jurisdiction of the key district director even though an appeals office has the identical issue under consideration in the case

of another taxpayer (not related within the meaning of § 267 or § 1504) in an entirely different transaction. With respect to the same taxpayer or the same transaction, when the issue is under the jurisdiction of an appeals office, and the applicability of more than one kind of federal tax is dependent upon the resolution of that issue, a key district director may not request technical advice on the applicability of any of the taxes involved.

A key district director or chief, appeals office also may not request technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer within the meaning of § 267 or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) is in a docketed case for the same taxpayer (or for a related taxpayer or a member of an affiliated group of which the taxpayer is also a member) for any taxable year.

At the earliest possible stage

.03 Once an issue is identified, all requests for technical advice should be made at the earliest possible stage in any proceeding. The fact that the issue is raised late in the examination or appeals process should not influence, however, the key district or appeals office's decision to request technical advice.

SECTION 9. WHAT MUST BE INCLUDED IN THE REQUEST?

Statement of issues, facts, law, and arguments

.01 Whether initiated by the taxpayer or by a key district or appeals office, a request for technical advice must include the facts and the issues for which technical advice is requested, and a written statement clearly stating the applicable law and the arguments in support of both the Service's and the taxpayer's position on the issue or issues.

Taxpayer must submit statement if the taxpayer initiates request for technical advice

(1) If the taxpayer initiates the request for technical advice, the taxpayer must submit to the EP/EO specialist or appeals officer, at the time the taxpayer initiates the request, a written statement—

- (a) stating the facts and the issues;
- (b) explaining the taxpayer's position;
- (c) discussing any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any authority supporting the taxpayer's position; and
- (d) stating the reasons for requesting technical advice.

If the EP/EO specialist or appeals officer determines that technical advice will be requested, the taxpayer's statement will be forwarded to the national office with the request for technical advice.

Taxpayer is encouraged to submit statement if Service initiates request for technical advice

(2) If the request for technical advice is initiated by a key district or appeals office, the taxpayer is encouraged to submit the written statement described in section 9.01(1) of this revenue procedure. If the taxpayer's statement is received after the request for technical advice has been forwarded to the national office, the statement will be forwarded to the national office for association with the technical advice request.

Statement of authorities contrary to taxpayer's position

(3) Whether the request for technical advice is initiated by the taxpayer or by a key district or appeals office, the taxpayer is also encouraged to comment on any legislation, tax treaties, regulations, revenue rulings, revenue procedures, or court decisions contrary to the taxpayer's position. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists.

Statement pertaining to statute of limitations

.02 As part of the request, the key district or appeals office must submit a statement, in addition to the criteria on Form 5565 referred to below, that (1) the applicable statute of limitations has at least 180 calendar days to run before its expiration or (2) the applicable statute of limitations will run prior to 180 calendar days from the date a request is transferred to the national office and the case should be processed on an expedited basis. If the key district or appeals office obtains an extension of the statute of limitations while the request is being processed in the national office, the office obtaining the extension must also submit a revised statement to the national office advising it of the new expiration date.

If there are less than 61 calendar days remaining before the expiration of the statute of limitations with respect to a case being processed on an expedited basis, the case will be returned to the office responsible for statute control of the file unless a decision is made pursuant to section 7(10)(14)1.5:(8) of the Internal Revenue Manual that the case can be timely processed. The national office will telephone (or fax notice of) its decision to the requesting key district or appeals office and will place a memorandum in the file to reflect whatever procedural steps have been taken.

General provisions of §§ 6104 and 6110

.03 Generally, § 6104(a)(1)(B) provides that an application filed with respect to: (1) the qualification of a pension, profit-sharing, or stock bonus plan under § 401(a) or § 403(a) or an individual retirement arrangement under § 408(a) or § 408(b) will be open to public inspection pursuant to regulations as will (2) any application filed for an exemption from tax under § 501(a) of an organization forming part of a plan or account described above. Generally, § 6110(a) provides that except as provided otherwise, written determinations (defined in § 6110(b)(1) as rulings, determination letters, and technical advice memorandums) and any related background file document will be open to public inspection pursuant to regulations.

Application of § 6104

.04 The requirements for submitting statements and other materials or proposed deletions in technical advice memorandums before public inspection is allowed do not apply to requests for any documents to the extent § 6104 applies.

Statement identifying information to be deleted from public inspection

.05 The text of a technical advice memorandum subject to § 6110 may be open to public inspection. The Service deletes certain information from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), the taxpayer must provide a statement indicating the deletions desired (“deletions statement”). If the taxpayer does not submit the deletions statement, the Service will follow the procedures in section 10.05 of this revenue procedure.

A taxpayer who wants only names, addresses, and identifying numbers deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the technical advice request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis, under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the technical advice memorandum is issued, additional deletion statements may be submitted.

The deletions statement must not appear in the request for technical advice but, instead, must be made in a separate document attached to the request.

The deletions statement must be signed and dated by the taxpayer or the taxpayer’s authorized representative. A stamped signature is not permitted.

The taxpayer should follow these same procedures to propose deletions from any additional information submitted after the initial request for technical advice. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer’s initial deletions statement requests that only names, addresses, and identifying numbers are to be deleted and the taxpayer wants the same information deleted from the additional information.

Transmittal Form 5565, Request for Technical Advice—EP/EO

.06 The key district or appeals office should use Form 5565, Request for Technical Advice—EP/EO, for transmitting a request for technical advice to the national office using the addresses listed below.

Address to send requests from key district offices

Employee Plans
Internal Revenue Service
Attn: CP:E:EP
1111 Constitution Ave., N.W.
Room 6052 CP:E:EO:P:2
Washington, DC 20224

Exempt Organizations
Internal Revenue Service
Attn: CP:E:EO
1111 Constitution Ave., N.W.
Room 6052 CP:E:EO:P:2
Washington, DC 20224

Address to send requests from appeals offices

Internal Revenue Service
Attn: C:AP:FS
Box 68
901 D Street, S.W.
Washington, DC 20024

Number of copies of request to be submitted

.07 The key district or the appeals office must submit (3) three copies of the request for technical advice to the national office.

Power of attorney

.08 Any authorized representative, as described in section 9.02 of Rev. Proc. 96-4, whether or not enrolled to practice, must comply with Treasury Department Circular No. 230 (31 CFR part 10 (1995)) and with the conference and practice requirements of the Statement of Procedural Rules (26 CFR part 601). It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used with regard to requests for technical advice under this revenue procedure.

Case files

.09 The key district or appeals office will submit copies of the original documents (the administrative file) to the national office accompanying the applicable Form 5565. The key district or appeals office will maintain the original documents (including any power of attorney).

SECTION 10. HOW ARE REQUESTS HANDLED?

Taxpayer notified

.01 Regardless of whether the taxpayer or the Service initiates the request for technical advice, the key district or appeals office will notify the taxpayer that technical advice is being requested and will give the taxpayer a copy of the arguments that are being provided to the national office in support of its position, except as noted in section 10.06 of this revenue procedure.

If the EP/EO specialist or appeals officer initiates the request for technical advice, he or she will give the taxpayer a copy of the statement of the pertinent facts and the issues proposed for submission to the national office.

Conference offered

.02 When notifying the taxpayer that technical advice is being requested, the EP/EO specialist or appeals officer will also tell the taxpayer about the right to a conference in the national office if an adverse decision is indicated and will ask the taxpayer whether such a conference is desired.

If the taxpayer disagrees with the Service's statement of facts

.03 If the EP/EO specialist or appeals officer initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and specific issues to indicate in writing any disagreement. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time. The extension is subject to the approval of the chief, EP/EO division, or the chief, appeals office.

After receiving the taxpayer's statement of the areas of disagreement, every effort should be made to reach agreement on the facts and the specific points at issue before the matter is referred to the national office. If an agreement cannot be reached, the key district or appeals office will notify the taxpayer in writing. Within 10 calendar days after receiving the written notice, the taxpayer may submit a statement of the taxpayer's understanding of the facts and the specific points at issue. A taxpayer who needs more than 10 calendar days to prepare the statement of understanding must justify, in writing, the request for an extension of time. The extension is subject to the approval of the chief, EP/EO division, or the chief, appeals office. Both the statements of the taxpayer and the key district or appeals office will be forwarded to the national office with the request for technical advice.

When the key district director or the chief, appeals office, and the taxpayer cannot agree on the material facts and the request for technical advice does not involve the issue of whether a letter ruling or determination letter should be modified or revoked, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, it will base its advice on the facts provided by the key district or appeals office.

If a request for technical advice involves the issue of whether a letter ruling or determination letter should be modified or revoked, the national office will issue the technical advice.

If the Service disagrees with the taxpayer's statement of facts

.04 If the taxpayer initiates the action to request technical advice, and the taxpayer's statement of the facts and issues is not wholly acceptable to the key district or appeals office, the Service will notify the taxpayer in writing of the areas of disagreement. The taxpayer has 10 calendar days after receiving the written notice to reply to it. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, EP/EO division, or the chief, appeals office.

If an agreement cannot be reached, both the statements of the taxpayer and the key district or appeals office will be forwarded to the national office with the request for technical advice. When the disagreement involves material facts essential to the preliminary assessment of the case, the key district director or the chief, appeals office, may refuse to refer a taxpayer initiated request for technical advice to the national office.

If the key district director or the chief, appeals office, submits a case involving a disagreement of material facts, the national office, at its discretion, may refuse to provide technical advice. If the national office chooses to issue technical advice, it will base its advice on the facts provided by the key district or appeals office.

If the taxpayer has not submitted the required deletions statement

.05 When the key district or appeals office initiates the request for technical advice, the taxpayer has 10 calendar days after receiving the statement of facts and issues to be submitted to the national office to provide the deletions statement required under § 6110(c) if public inspection is permitted pursuant to § 6110 (*see* section 9.05 of this revenue procedure). In such a case, if the taxpayer does not submit the deletions statement, the key district director or the chief, appeals office, will tell the taxpayer that the statement is required.

When the taxpayer initiates the request for technical advice and does not submit with the request a deletions statement as required by § 6110, the key district director or the chief, appeals office, will ask the taxpayer to submit the statement. If the key district director or the chief, appeals office, does not receive the deletions statement within 10 calendar days after asking the taxpayer for it, the key district director or the chief, appeals office, may decline to submit the request for technical advice.

However, if the key district director or the chief, appeals office, decides to request technical advice, whether initiated by the key district or appeals office or by the taxpayer, in a case in which the taxpayer has not submitted the deletions statement, the national office will make those deletions that the Commissioner of Internal Revenue determines are required by § 6110(c).

Criminal or civil fraud cases

.06 The provisions of this section (about referring issues upon the taxpayer's request, obtaining the taxpayer's statement of the areas of disagreement, telling the taxpayer about the referral of issues, giving the taxpayer a copy of the arguments submitted, submitting proposed deletions, and granting conferences in the national office) do not apply to a technical advice memorandum described in § 6110(g)(5)(A) that involves a matter that is the subject of or is otherwise closely related to a criminal or civil fraud investigation, or a jeopardy or termination assessment.

In these cases, a copy of the technical advice memorandum is given to the taxpayer after all proceedings in the investigations or assessments are complete, but before the Commissioner mails the notice of intention to disclose the technical advice memorandum under § 6110(f)(1). The taxpayer may then provide the statement of proposed deletions to the national office.

SECTION 11. HOW DOES A TAXPAYER APPEAL A KEY DISTRICT OR AN APPEALS OFFICE DECISION NOT TO SEEK TECHNICAL ADVICE?

Taxpayer notified of decision not to seek technical advice

.01 If the EP/EO specialist or appeals officer concludes that a taxpayer's request for referral of an issue to the national office for technical advice does not warrant referral, the EP/EO specialist or appeals officer will tell the taxpayer. A taxpayer's request for such a referral will not be denied merely because the national office provided legal advice, other than advice furnished pursuant to this revenue procedure, to the key district or appeals office on the matter.

Taxpayer may appeal decision not to seek technical advice

.02 The taxpayer may appeal the decision of the EP/EO specialist or the appeals officer not to request technical advice. To do so, the taxpayer must submit to that official, within 10 calendar days after being told of the decision, a statement of the facts, law, and arguments on the issue and the reasons why the taxpayer believes the matter should be referred to the national office for technical advice. A taxpayer who needs more than 10 calendar days must justify in writing the request for an extension of time. The extension is subject to the approval of the chief, EP/EO division, or the chief, appeals office.

Chief, EP/EO division, or chief, appeals office, determines whether technical advice will be sought

.03 The EP/EO specialist or the appeals officer submits the taxpayer's statement through proper channels to the chief, EP/EO division, or the chief, appeals office, along with the EP/EO specialist's or the appeals officer's statement of why the issue should not be referred to the national office. The chief determines, on the basis of the statements, whether technical advice will be requested.

If the chief determines that technical advice is not warranted and proposes to deny the request, the taxpayer is told in writing about the determination. In the letter to the taxpayer, the chief states the reasons for the proposed denial (except in unusual situations when doing so would be prejudicial to the best interests of the Government). The taxpayer has 10 calendar days after receiving the letter to notify the chief of agreement or disagreement with the proposed denial.

Chief's decision may be reviewed but not appealed

.04 The taxpayer may not appeal the decision of the chief, EP/EO division, or the chief, appeals office, not to request technical advice from the national office. However, if the taxpayer does not agree with the proposed denial, all data on the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations) or the National Director of Appeals as appropriate.

The Assistant Commissioner (Employee Plans and Exempt Organizations), through the Director, Employee Plans Division, or the Director, Exempt Organizations Division or, if appropriate, the National Director of Appeals will review the proposed denial solely on the basis of the written record, and no conference will be held with the taxpayer or the taxpayer's representative. The appropriate Director or his or her representative may consult within the national office, if necessary, and will notify the key district office or appeals office within 45 calendar days of receiving all the data regarding the request for technical advice whether the proposed denial is approved or disapproved. The key district office or appeals office will then notify the taxpayer.

While the matter is being reviewed, the key district office or the appeals office suspends action on the issue (except when the delay would prejudice the Government's interest).

The provisions of this revenue procedure regarding review of the proposed denial of a request for technical advice continue to be applicable in those situations in which the authority normally exercised by the key district director or chief, appeals office, has been delegated to another official.

SECTION 12. HOW ARE REQUESTS FOR TECHNICAL ADVICE WITHDRAWN?

Taxpayer notified

.01 Once a request for technical advice has been sent to the national office, only a key district director or a chief, appeals office, may withdraw a request for technical advice. He or she may ask to withdraw a request at any time before the responding transmittal memorandum transmitting the technical advice is signed.

The key district director or the chief, appeals office, as appropriate, must notify the taxpayer in writing of an intent to withdraw the request for technical advice except (1) when the period of limitations on assessment is about to expire and the taxpayer has declined to sign a consent to extend the period, or (2) when such notification would be prejudicial to the best interests of the Government.

If the taxpayer does not agree that the request for technical advice should be withdrawn, the procedures in section 11 of this revenue procedure must be followed.

National office may provide views

.02 When a request for technical advice is withdrawn, the national office may send its views to the key district director or the chief, appeals office, when acknowledging the withdrawal request. In an appeals case, acknowledgment of the withdrawal request

should be sent to the appropriate appeals office, through the National Director of Appeals, C:AP:FS. In appropriate cases, the subject matter may be published as a revenue ruling or as a revenue procedure.

SECTION 13. HOW ARE CONFERENCES SCHEDULED?

If requested, offered to the taxpayer when adverse technical advice proposed

.01 If, after the technical advice request is analyzed, it appears that technical advice adverse to the taxpayer will be given, and if a conference has been requested, the taxpayer will be informed, by telephone if possible, of the time and place of the conference.

Normally held within 21 days of contact with the taxpayer

.02 The conference must be held within 21 calendar days after the taxpayer is contacted. If conferences are being arranged for more than one request for technical advice for the same taxpayer, they will be scheduled to cause the least inconvenience to the taxpayer. If considered appropriate, the national office will notify the EP/EO specialist or appeals officer of the scheduled conference and will offer the EP/EO specialist or appeals officer the opportunity to attend the conference. The Assistant Commissioner (EP/EO), the National Director of Appeals, the key district director, or the chief, appeals office may designate other Service representatives to attend the conference in lieu of, or in addition to, the EP/EO specialist or the appeals officer.

21-day period may be extended if justified and approved

.03 An extension of the 21-day period will be granted only if the taxpayer justifies it in writing, and the appropriate branch chief (or his or her delegate) approves it. The request for an extension should be submitted before the end of the 21-day period. If unusual circumstances near the end of the period make a timely written request impractical, the national office should be told orally before the end of the period about the problem and about the forthcoming written request for an extension. The taxpayer will be told promptly (and later in writing) of the approval or denial of the requested extension.

Denial of extension cannot be appealed

.04 There is no right to appeal the denial of an extension request. If the national office is not advised of problems with meeting the 21-day period, or if the written request is not sent promptly after the national office is notified of problems with meeting the 21-day period, the case will be processed on the basis of the existing record.

Entitled to one conference of right

.05 A taxpayer is entitled by right to only one conference in the national office unless one of the circumstances discussed in section 13.09 of this revenue procedure exists. This conference is normally held at the branch level in the appropriate division (Employee Plans Division or Exempt Organizations Division). It is attended by a person who has authority to sign the transmittal memorandum discussed in section 15.13 on behalf of the branch chief.

When more than one branch has taken an adverse position on an issue in the request, or when the position ultimately adopted by one branch will affect another branch's determination, a representative from each branch with authority to sign for the branch chief will attend the conference. If more than one subject is discussed at the conference, the discussion constitutes the conference of right for each subject discussed.

To have a thorough and informed discussion of the issues, the conference usually is held after the branch has had an opportunity to study the case. However, the taxpayer may request that the conference of right be held earlier in the consideration of the case than the Service would ordinarily designate.

The taxpayer has no right to appeal the action of a branch to a Division Director or to any other Service official. But see section 13.09 for situations in which the Service may offer additional conferences.

Conference may not be taped

.06 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

Conference may be delayed to address a request for relief under § 7805(b)

.07 In the event of a tentative adverse determination, the branch representatives may offer the taxpayer the option of delaying the conference so that the taxpayer can prepare and submit a brief requesting relief under § 7805(b) (discussed in section 18 of this revenue procedure). In these cases, the Service will schedule a conference on the tentatively adverse position and the § 7805(b) relief request within 10 days of receiving the taxpayer's § 7805(b) request.

Service makes tentative recommendations

.08 The senior Service representative at the conference ensures that the taxpayer has full opportunity to present views on all the issues in question. The Service representatives explain the tentative decision on the substantive issues and the reasons for it.

If the taxpayer requests relief under § 7805(b) (regarding limitation of retroactive effect), the representative will discuss the tentative recommendation concerning the request for relief and the reason for the tentative recommendation.

No commitment will be made as to the conclusion that the Service will finally adopt regarding the outcome of the § 7805(b) issue or on any other issue discussed.

Additional conferences may be offered

.09 The Service will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed on a new issue or on the same issue but on grounds different from those discussed at the first conference.

When a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, the taxpayer has no right to another conference if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limitation on the number of conferences to which a taxpayer is entitled does not prevent the national office from inviting a taxpayer to attend additional conferences, including conferences with an official higher than the branch level, if national office personnel think they are necessary. Such conferences are not offered as a matter of course simply because the branch has reached an adverse decision. In general, conferences with higher level officials are offered only if the Service determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

In accordance with section 13.02 of this revenue procedure, the EP/EO specialist or appeals officer will be offered the opportunity to participate in any additional taxpayer's conference, including a conference with an official higher than the branch level. Section 13.02 of this revenue procedure also provides that other Service representatives are allowed to participate in the conference.

Additional information submitted after the conference

.10 Within 21 calendar days after the conference, the taxpayer must furnish to the national office any additional data, lines of reasoning, precedents, etc., that the taxpayer proposed and discussed at the conference but did not previously or adequately present in writing. This additional information must be submitted by letter with a penalties of perjury statement in the form described in section 15.10 of this revenue procedure.

The taxpayer must also send a copy of the additional information to the key district director or the chief, appeals office, for comment. Any comments must be furnished promptly to the appropriate branch in the national office. If the key district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

If the additional information would have a significant impact on the facts in the request for technical advice, the national office will ask the key district director or the chief, appeals office, for comments on the facts contained in the additional information submitted. The key district director or the chief, appeals office, will give the additional information prompt attention.

If the additional information is not received from the taxpayer within 21 days, the technical advice memorandum will be issued on the basis of the existing record.

An extension of the 21-day period may be granted only if the taxpayer justifies it in writing, and the appropriate branch chief (or his or her delegate) approves the extension. Procedures for requesting an extension of the 21-day period and notifying the taxpayer of the Service's decision are the same as those in sections 13.03 and 13.04 of this revenue procedure.

May, under limited circumstances, schedule a conference to be held by telephone

.11 Infrequently, taxpayers request that their conference of right be held by telephone. This may occur, for example, when a taxpayer wants a conference of right but believes that the issue does not warrant the expense of traveling to Washington, DC. If a taxpayer makes such a request, the branch chief, or his or her delegate of the

branch to which the case is assigned, will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved, the taxpayer will be advised when to call the Service representatives (not a toll-free call).

In accordance with section 13.02 of this revenue procedure, the EP/EO specialist or appeals officer will be offered the opportunity to participate in the telephone conference. Section 13.02 of this revenue procedure also provides that Service representatives are allowed to participate in the conference.

SECTION 14. HOW IS STATUS OF REQUEST OBTAINED?

Taxpayer may request status

.01 The taxpayer or the taxpayer's representative may obtain information on the status of the request for technical advice by contacting the key district or appeals office that requested the technical advice. *See* section 15.08 of this revenue procedure concerning the time for discussing the tentative conclusion with the taxpayer's representative. *See* section 16.02 of this revenue procedure regarding discussions of the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative.

Key district director or chief, appeals office may request status

.02 The key district or appeals office will be given status updates on the technical advice quarterly by the national office branch chief assigned to the request. In addition, a key district director or chief, appeals office, may get current information on the status of the request for technical advice by calling the office of the appropriate branch chief. Those offices and their matters of responsibility are listed below:

Official	Telephone Numbers (Area Code 202) (not toll-free)
Chief, Employee Plans Technical Branch 1;	622-6077
Branch 2;	622-8400
Branch 3;	622-8447
Branch 4;	622-8457
Branch 5	622-8165
Chief, Employee Plans Projects Branch 1;	622-7428
Branch 2;	622-7882
Branch 3	622-7389
Chief, Employee Plans Actuarial Branch 1;	622-8330
Branch 2;	622-7529
Branch 3	622-7789
Chief, Exempt Organizations Technical Branch 1;	622-8715
Branch 2;	622-8140
Branch 3;	622-8120
Branch 4;	622-8130
Branch 5	622-6861

See section 15.09 of this revenue procedure about discussing the final conclusions with the key district or appeals office. Further, the key district director or the chief, appeals office will be notified at the time the technical advice memorandum is mailed.

SECTION 15. HOW DOES THE NATIONAL OFFICE PREPARE THE TECHNICAL ADVICE MEMORANDUM?

Delegates authority to branch chiefs

.01 The authority to issue technical advice on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) has largely been delegated to the Chiefs, Employee Plans Technical Branches; Chiefs, Employee Plans Projects Branches; Chiefs, Employee Plans Actuarial Branches; and Chiefs, Exempt Organizations Technical Branches.

Determines whether request has been properly made	.02 Requests for technical advice generally are given priority and processed expeditiously. As soon as the request for technical advice is assigned, the technical employee analyzes the file to see whether it meets all requirements of sections 7 through 9 of this revenue procedure.
	However, if the request does not comply with the requirements of section 9.05 of this revenue procedure relating to the deletions statement, the Service will follow the procedure in the last paragraph of section 10.05 of this revenue procedure.
Contacts the key district or appeals office to discuss issues	.03 Usually, within 21 calendar days after the branch receives the request for technical advice, a representative of the branch telephones the key district or appeals office to discuss the procedural and substantive issues in the request that come within the branch's jurisdiction.
Determines whether any matters in the request should be referred to another branch	.04 If the technical advice request concerns matters within the jurisdiction of more than one branch, a representative of the branch that received the original technical advice request generally informs the key district or appeals office within 21 calendar days of receiving the request that—
	(1) the matters within the jurisdiction of another branch have been referred to the other branch or office for consideration, and
	(2) a representative of the other branch or office will contact the key district or appeals office about the referral of the technical advice request within 21 calendar days after receiving it in accordance with section 15.03 above.
Informs the key district or appeals office if additional information is needed	.05 The branch representative will inform the key district or appeals office that the case is being returned if substantial additional information is required to resolve an issue. Cases should be returned for additional information when significant unresolved factual variances exist between the statement of facts submitted by the key district or appeals office and the taxpayer. They should also be returned if major procedural problems cannot be resolved by telephone.
	If only minor procedural deficiencies exist, the branch will request the additional information in the most expeditious manner without returning the case.
Gives tentative conclusion	.06 If all necessary information has been provided, the branch representative discusses with the key district or appeals office his or her tentative conclusion.
If a tentative conclusion has not been reached, gives date estimated for tentative conclusion	.07 If a tentative conclusion has not been reached because of the complexity of the issue, the branch representative informs the key district or appeals office of the estimated date the tentative conclusion will be made.
Advises the key district or appeals office that preliminary conclusion not final	.08 Because the branch representative's tentative conclusion may change during the preparation and review of the technical advice memorandum, the tentative conclusion should not be considered final. Therefore, neither the branch representative nor the key district or appeals office should advise the taxpayer or the taxpayer's representative of the tentative conclusion before the scheduling of the adverse conference.
Advises the key district or appeals office of final conclusions	.09 In all cases, the branch representative should inform the EP/EO specialist or appeals officer of the national office's final conclusions. The EP/EO specialist or the appeals officer should be offered the opportunity to discuss the issues and the national office's final conclusions before the technical advice memorandum is issued.
If additional information is requested	.10 If, following the initial contact referenced in section 15.03 of this revenue procedure, it is determined, after discussion with the appropriate branch chief or reviewer, that additional information is needed, a branch representative will obtain the additional information from the taxpayer, the key district director, or the chief, appeals office, in the most expeditious manner possible. Any additional information requested from the taxpayer by the national office must be submitted by letter with a penalties of perjury statement within 21 calendar days after the request for information is made.
Penalties of perjury statement	Additional information submitted to the national office must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and to the best of my knowledge and belief, the facts represented are true, correct, and complete." This declaration must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.

A written request for an extension of time to submit additional information must be received by the national office within the 21 day period, giving compelling facts and circumstances to justify the proposed extension. The appropriate branch chief (or his or her delegate) will determine whether to grant or deny the request for an extension of the 21-day period. There is no right to appeal the denial of an extension request.

If the national office does not receive the additional information within 21 calendar days, plus any extensions granted by the branch chief (or his or her delegate), the national office will process the technical advice memorandum based on the existing record.

Additional information sent to the national office and copy sent to the key district director or chief, appeals office

.11 If additional information is requested, it should be sent by the taxpayer to the national office.

Also, the taxpayer must send a copy to either the key district director or the chief, appeals office, for comment. Any comments must be furnished promptly to the appropriate branch in the national office. If the key district director or the chief, appeals office, does not have any comments, he or she must notify the branch representative promptly.

Informs the taxpayer when requested deletions will not be made

.12 Generally, before replying to the request for technical advice, the national office informs the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum that the taxpayer proposed be deleted but that the Service has determined should not be deleted.

If so informed, the taxpayer may submit within 10 calendar days any further information or other arguments supporting the taxpayer's proposed deletions.

The Service will attempt to resolve all disagreements about proposed deletions before the national office replies to the request for technical advice. However, the taxpayer does not have the right to a conference to resolve any disagreements about material to be deleted from the text of the technical advice memorandum. These matters, however, may be considered at any conference otherwise scheduled for the request.

Prepares reply in two parts

.13 The national office's reply to a technical advice request is in two parts. Each part identifies the taxpayer by name, address, identification number, and year or years involved.

The first part of the reply is a transmittal memorandum (Form M-6361). In unusual cases, it is a way of giving the key district or appeals office administrative or other information that under the nondisclosure statutes or for other reasons may not be discussed with the taxpayer.

The second part is the technical advice memorandum, which contains—

- (1) a statement of the issues;
- (2) a statement of the facts pertinent to the issues;
- (3) a statement of the pertinent law, tax treaties, regulations, revenue rulings, and other precedents published in the Internal Revenue Bulletin, and court decisions;
- (4) a discussion of the rationale underlying the conclusions reached by the national office; and
- (5) the conclusions of the national office.

The conclusions give direct answers, whenever possible, to the specific issues raised by the key district or appeals office. However, the national office is not bound by the precise statement of the issues as submitted by the taxpayer or by the key district or appeals office and may reframe the issues to be answered in the technical advice memorandum. The discussion of the issues will be in sufficient detail so that the key district or appeals officials will understand the reasoning underlying the conclusion.

Accompanying a technical advice memorandum subject to § 6110, is a notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

Routes replies to appropriate office

.14 Replies to requests for technical advice are addressed to the key district director or the chief, appeals office. Replies to requests from appeals should be routed to the appropriate appeals office through the National Director of Appeals, C:AP:FS.

SECTION 16. HOW DOES A KEY DISTRICT OR AN APPEALS OFFICE USE THE TECHNICAL ADVICE?

Generally applies advice in processing the taxpayer's case

.01 The key district director or the chief, appeals office, must process the taxpayer's case on the basis of the conclusions in the technical advice memorandum unless—

(1) the key district director or the chief, appeals office, decides that the conclusions reached by the national office in a technical advice memorandum should be reconsidered, or

(2) the chief, appeals office, in the case of technical advice unfavorable to the taxpayer, decides to settle the issue in the usual manner under existing authority.

In any event, with or without requesting reconsideration, the key district director must follow the conclusions in a technical advice memorandum as to all issues, and the chief, appeals office, must follow the conclusions in a technical advice memorandum on issues of an organization's/plan's status or qualification. Thus, if the technical advice memorandum received by a key district director concerns an organization's/plan's status or qualification, the organization/plan has no appeal to the appeals office on those specific issues.

Discussion with the taxpayer

.02 The national office will not discuss the contents of the technical advice memorandum with the taxpayer or the taxpayer's representative until the taxpayer has been given a copy by the key district or appeals office.

Gives copy to the taxpayer

.03 The key district director or the chief, appeals office, only after adopting the technical advice, gives the taxpayer (1) a copy of the technical advice memorandum described in section 15.13, and (2) the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications under § 6110(d)).

This requirement does not apply to technical advice memorandums involving criminal or civil fraud investigations, or jeopardy or termination assessments, as described in section 10.06 of this revenue procedure, or documents to which § 6104 (document open to public inspection) applies as described in section 9.03.

Taxpayer may protest deletions not made

.04 After receiving the notice under § 6110(f)(1) of intention to disclose the technical advice memorandum, the taxpayer may protest the disclosure of certain information in it. The taxpayer must submit a written statement within 20 calendar days identifying those deletions not made by the Service that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection with brackets around deletions proposed by the taxpayer that have not been made by the national office.

Generally, the national office considers only the deletion of material that the taxpayer has proposed be deleted or other deletions as required under § 6110(c) before the national office reply is sent to the key district director or the chief, appeals office. Within 20 calendar days after it receives the taxpayer's response to the notice under § 6110(f)(1), the national office must mail the taxpayer its final administrative conclusion about the deletions to be made.

When no copy is given to the taxpayer

.05 In those cases in which the national office tells the key district director or the chief, appeals office, that a copy of the technical advice memorandum should not be given to the taxpayer, the key district director or the chief, appeals office, will tell the taxpayer that no copy will be given if the taxpayer requests a copy.

SECTION 17. WHAT IS THE EFFECT OF TECHNICAL ADVICE?

Applies only to the taxpayer for whom technical advice was requested

.01 A taxpayer may not rely on a technical advice memorandum issued by the Service for another taxpayer.

Usually applies retroactively

.02 Except when stated otherwise, a holding in a technical advice memorandum is applied retroactively, unless the Assistant Commissioner (Employee Plans and Exempt Organizations) exercises discretionary authority under § 7805(b) to limit the

retroactive effect of the holding. Section 17.06 below lists the criteria necessary for granting § 7805(b) relief, and section 18 of this revenue procedure describes the effect of § 7805(b) relief.

Generally applied retroactively to modify or revoke prior technical advice

.03 A holding that modifies or revokes a holding in a prior technical advice memorandum is applied retroactively, with one exception. If the new holding is less favorable to the taxpayer than the earlier one, it generally is not applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions.

Applies to continuing action or series of actions until specifically withdrawn, modified, or revoked

.04 If a technical advice memorandum relates to a continuing action or a series of actions, ordinarily it is applied until specifically withdrawn or until the conclusion is modified or revoked by enactment of legislation, ratification of a tax treaty, a decision of the United States Supreme Court, or the issuance of regulations (temporary or final), a revenue ruling, or other statement published in the Internal Revenue Bulletin. Publication of a notice of proposed rulemaking does not affect the application of a technical advice memorandum.

Applies to continuing action or series of actions until material facts change

.05 A taxpayer is not protected against retroactive modification or revocation of a technical advice memorandum involving a continuing action or a series of actions occurring after the material facts on which the technical advice memorandum is based have changed.

Not applied retroactively under certain conditions

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum or determination letter if—

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or technical advice memorandum or determination letter was based;
- (3) there has been no change in the applicable law;
- (4) in the case of a letter ruling, it was originally issued on a prospective or proposed transaction; and
- (5) the taxpayer directly involved in the letter ruling or technical advice memorandum or determination letter acted in good faith in relying on the letter ruling or technical advice memorandum or determination letter, and the retroactive modification or revocation would be to the taxpayer's detriment. For example, the tax liability of each employee covered by a letter ruling or technical advice memorandum or determination letter relating to a pension plan of an employer is directly involved in the letter ruling or technical memorandum or determination letter. However, the tax liability of members of an industry is not directly involved in a letter ruling or technical advice memorandum or determination letter issued to one of the members, and the holding in a modification or revocation of a letter ruling or technical advice memorandum or determination letter to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a letter ruling or technical advice memorandum or determination letter previously issued to another client.

When a letter ruling or determination letter to a taxpayer or a technical advice memorandum involving a taxpayer is modified or revoked with retroactive effect, the notice to the taxpayer, except in fraud cases, sets forth the grounds on which the modification or revocation is being made and the reason why the modification or revocation is being applied retroactively.

In order for a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter not to be applied retroactively either to the taxpayer to whom or for whom the letter ruling, technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling, technical advice memorandum or determination letter, such taxpayer generally must request relief under § 7805(b) in the manner described in section 18 below.

**SECTION 18. HOW MAY
RETROACTIVE EFFECT BE
LIMITED?**

**Commissioner has discretionary
authority under § 7805(b)**

.01 Under § 7805(b) the Commissioner or the Commissioner's delegate has the discretion to prescribe the extent, if any, to which a technical advice memorandum will be applied without retroactive effect.

**Taxpayer may request
Commissioner to exercise
authority**

.02 A taxpayer who has received a technical advice memorandum or for whom a technical advice request is pending may request that the Assistant Commissioner (Employee Plans and Exempt Organizations), the Commissioner's delegate, exercise the discretionary authority under § 7805(b) to limit the retroactive effect of any holding stated in the technical advice memorandum or to limit the retroactive effect of any subsequent modification or revocation of the technical advice memorandum.

**Form of request to limit
retroactivity—before an
examination**

.03 When a technical advice memorandum that concerns a continuing transaction is modified or revoked by, for example, a subsequent revenue ruling or final regulations, a request to limit the retroactive effect of the modification or revocation of the technical advice memorandum must be made in the form of a request for a letter ruling if submitted before examination of the return that contains the transaction that is the subject of the request for letter ruling. *See Rev. Proc. 96-4.*

**Form of request to limit
retroactivity—during course of an
examination**

.04 When, during the course of an examination of a taxpayer's return by a key district director or consideration by the chief, appeals office, a taxpayer is informed that the key district director or the chief, appeals office, recommends that a technical advice memorandum be modified or revoked, a request to limit the retroactive application of the modification or revocation of the technical advice memorandum must itself be made in the form of a request for technical advice. *See sections 7 through 9 of this revenue procedure and sections 18.07 and 18.08 below.*

The taxpayer must also submit a statement that the request is being made pursuant to § 7805(b). This statement must also indicate the relief requested and give the reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The explanation should discuss the five items listed in section 17.06 of this revenue procedure as they relate to the taxpayer's situation.

The taxpayer's request, including the statement that the request is being made pursuant to § 7805(b), must be forwarded by the key district director or the chief, appeals office, to the national office for consideration.

**Form of request to limit
retroactivity—technical advice
that does not modify or revoke
prior memorandum**

.05 A request to limit the retroactive effect of a holding in a technical advice memorandum that does not modify or revoke a technical advice memorandum may be made as part of that technical advice request, either initially, or at any time before the technical advice memorandum is issued by the national office. In such a case, the taxpayer must also submit a statement in support of the application of § 7805(b), as described in section 18.04 above.

Taxpayer's right to a conference

.06 When a request for technical advice concerns only the application of § 7805(b), the taxpayer has the right to a conference in the national office in accordance with the provisions of section 13 of this revenue procedure.

If the request for application of § 7805(b) is included in the request for technical advice on the substantive issues or is made before the conference of right on the substantive issues, the § 7805(b) issues will be discussed at the taxpayer's one conference of right.

If the request for the application of § 7805(b) is made as part of a pending technical advice request after a conference has been held on the substantive issues, and the Service determines that there is justification for having delayed the request, then the taxpayer will have the right to one conference of right concerning the application of § 7805(b), with the conference limited to discussion of this issue.

**Exhaustion of administrative
remedies—employee plans
determination letter requests**

.07 Where the applicant has requested the key district director to seek technical advice on the applicability of § 7805(b) relief to a qualification issue under § 401(a) pursuant to a determination letter request, the applicant's administrative remedies will not be considered exhausted until the national office has a reasonable time to act on the request for technical advice. (*See section 21 of Rev. Proc. 96-6.*)

Exhaustion of administrative remedies—exempt organization matters

.08 Where technical advice has been requested pursuant to an exempt organization's request for § 7805(b) relief from the retroactive application of an adverse determination within the meaning of § 7428(a)(1), the exempt organization's administrative remedies will not be considered exhausted, within the meaning of § 7428(b)(2), until the national office has a reasonable time to act on the request for technical advice.

Rev. Proc. 95-5 is superseded.

SECTION 19. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

This revenue procedure is effective January 2, 1996.

SECTION 20. EFFECTIVE DATE DRAFTING INFORMATION

The principal authors of this revenue procedure are Michael Rubin of the Employee Plans Division and Dave Flavin of the Exempt Organizations Division. For further information regarding how this revenue procedure applies to employee plans matters, please contact the Employee Plans Division's taxpayer assistance telephone service or Mr. Rubin between the hours of 1:30 and 4 p.m. Eastern time, Monday through Thursday on (202) 622-6074/6075 or (202) 622-6214, respectively. For exempt organizations matters, please contact Mr. Flavin at (202) 622-7922. These telephone numbers are not toll-free.

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APPENDIX § 420 determination letters

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

Purpose of revenue procedure

.01 This revenue procedure sets forth the procedures of the various offices of the Internal Revenue Service for issuing determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans (ESOPs) under §§ 401, 403(a), 409 and 4975(e)(7) of the Internal Revenue Code of 1986, and the status for exemption of any related trusts or custodial accounts under § 501(a).

Organization of revenue procedure

.02 Part I of this revenue procedure contains instructions for requesting determination letters for various types of plans and transactions. Part II contains procedures for providing notice to interested parties and for interested parties to comment on determination letter requests. Part III contains procedures concerning the processing of determination letter requests and describes the effect of a determination letter.

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO THIS PROCEDURE?

In general

.01 This revenue procedure is a general update of Rev. Proc. 95-6, 1995-1 C.B. 452, which contains the Service's general procedures for employee plans determination letter requests. Most of the changes to Rev. Proc. 95-6 involve minor revisions, such as updating citations to other revenue procedures.

Rev. Proc. 93-39 as modified by Rev. Proc. 94-37 is superseded by this procedure

.02 Rev. Proc. 93-39, 1993-2 C.B. 513, as modified by Rev. Proc. 94-37, 1994-1 C.B. 683, sets forth additional procedures regarding applications for determination letters on the qualified status of pension, profit-sharing, and annuity plans under § 401(a) or 403(a) of the Code filed with the Service on or after October 12, 1993. The procedures in Rev. Proc. 93-39 reflect changes to the plan qualification requirements made by the Tax Reform Act of 1986 (TRA '86), Pub. L. 99-514, as well as the final nondiscrimination regulations under § 401(a)(4) that were published in 1993. The procedures in Rev. Proc. 93-39, as modified by Rev. Proc. 94-37, have now been incorporated into this revenue procedure or in the revised determination letter application forms, as described below. Accordingly, this revenue procedure supersedes Rev.

Proc. 93–39, with the exception of section 12 (regarding the time by which plans must be amended to comply with the requirements of § 401(a)(31)) and section 13 (regarding extended reliance).

New section describing scope of determination letter added

.03 Section 5, which describes the scope of determination letters, particularly with respect to the nondiscrimination requirements, has been added.

Application forms revised

.04 The Service is revising the forms that are used to apply for determination letters. The following forms are being revised:

- 1 Form 5300, Application for Determination for Employee Benefit Plan;
- 2 Form 5303, Application for Determination for Collectively Bargained Plan;
- 3 Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans;
- 4 Form 5310, Application for Determination for Terminating Plan; and
- 5 Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

New Schedule Q (Form 5300), nondiscrimination requirements

.05 The Service is also issuing new Schedule Q (Form 5300), Nondiscrimination Requirements. Schedule Q (Form 5300) will take the place of the attachment that was required by section 5.03 of Rev. Proc. 93–39 to be included with determination letter applications. (A model attachment was included in Appendix A of Rev. Proc. 93–39.) This revenue procedure requires Schedule Q (Form 5300) to be filed with all determination letter applications, other than applications filed on Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan; applications relating to the qualified status of group trusts; and applications relating solely to the requirements of § 420 of the Code, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

Service will accept applications filed under prior procedures for limited time

.06 The Service will continue to accept determination letter applications that are filed on Form 5300 series forms with revision dates before January 1996, and that do not include Schedule Q (Form 5300), through the 120th day following the date of the Service’s announcement in the Internal Revenue Bulletin of the availability of the revised forms, provided such applications would satisfy the requirements of Rev. Proc. 93–39.

Rev. Proc. 81–19 is superseded by this procedure

.07 Rev. Proc. 81–19, 1981–1 C.B. 689, provides optional procedures for employers to obtain determination letters on certain amendments to plans for which favorable determination letters have been issued. Rev. Proc. 81–19 provides that determination letters that express an opinion only as to whether amendments, in and of themselves, affect a plan’s qualification may be requested on either Form 6406 or on Form 5300. It also provides that a determination letter on the qualification of the entire plan, as amended, may be requested only by filing Form 5300 with a copy of the plan that includes all plan amendments made to the date of the application. This revenue procedure provides that “amendment only” letters will be issued only for applications filed on Form 6406. (See sections 7, 11, and 22.) Accordingly, Rev. Proc. 81–19 is superseded.

PART I. PROCEDURES FOR DETERMINATION LETTER REQUESTS

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN GUIDANCE UNDER THIS PROCEDURE?

Types of requests

.01 Determination letters may be requested on completed and proposed transactions as set forth in the table below:

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
1. Initial Qualification, etc.		
a. Individually Designed Plans (other than collectively bargained)	5300, Schedule Q	7
b. ESOPs	5300, 5309, Schedule Q	7
c. Collectively Bargained Plans	5303, Schedule Q,	7
d. Adoption of Master & Prototype or Regional prototype plans (including a collectively bargained plan if no non-collectively bargained employees are in the plan)	5307, Schedule Q	8
e. Volume Submitter Plans (including a collectively bargained plan if no non-collectively bargained employees are in the plan)	5307, Schedule Q	9
f. Multiple Employer Plans	5300, Schedule Q	10
g. Foreign Situs Trusts	5300, Schedule Q	13
h. Group Trusts	Cover letter	14
i. Section 420 determination letters	Cover letter, Checklist, Appendix	17
2. Minor Amendments	6406	11
3. Termination		
a. In general	5310, 6088, Schedule Q	12
b. Multiemployer plan covered by PBGC insurance	5303, 6088, Schedule Q	12
<p>Note: Form 5310–A, Notice of Plan Merger, Consolidation, Spinoff or Transfer of Plan Assets or Liabilities, Notice of Qualified Separate Lines of Business, generally must be filed not less than 30 days before the merger, consolidation or transfer of assets and liabilities, the filing of Form 5310–A will not result in the issuance of a determination letter.</p>		
4. Special Procedures		
a. Affiliated Service Group Status (§ 414(m)), Leased Employees (§ 414(n))	5300, Schedule A	15
b. Minimum Funding Waiver	5300, Schedule Q	16

Areas in which determination letters will not be issued

.02 Determination letters issued in accordance with this revenue procedure do not include determinations on the following issues within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations):

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(1), 409(m), 412, 457, 511 through 515, and 4975 (other than 4975(e)(7)), unless these determination letters are authorized under section 7 of Rev. Proc. 96–4, page 94, this Bulletin.

(2) Plans or plan amendments for which automatic approval is granted pursuant to section 8.05 below.

(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the qualified status of a plan under § 401(a)).

(a) An amendment solely to permit a trust forming part of a plan to participate in a pooled fund arrangement described in Rev. Rul. 81–100, 1981–1 C.B. 326;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases, other than an amendment that adds an automatic cost-of-living adjustment provision to the plan; and

(c) An amendment solely to include language pursuant to § 403(c)(2) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the reversion of employer contributions made as a result of mistake of fact.

(4) This section applies to determination letter requests with respect to plans that combine an ESOP (as defined in § 4975(e)(7) of the Code) with retiree medical benefit features described in § 401(h) (“HSOPs”).

(a) In general, determination letters will not be issued with respect to plans that combine an ESOP with an HSOP with respect to:

- (i) whether the requirements of § 4975(e)(7) are satisfied;
- (ii) whether the requirements of § 401(h) are satisfied; or
- (iii) whether the combination of an ESOP with an HSOP in a plan adversely affects its qualification under § 401(a).

(b) A plan is considered to combine an ESOP with an HSOP if it contains ESOP provisions and § 401(h) provisions.

(c) However, an arrangement will not be considered covered by section 3.02(4) of this revenue procedure if, under the provisions of the plan, the following conditions are satisfied:

- (i) No individual accounts are maintained in the § 401(h) account (except as required by § 401(h)(6));
- (ii) No employer securities are held in the § 401(h) account;
- (iii) The § 401(h) account does not contain the proceeds (directly or otherwise) of an exempt loan as defined in § 54.4975-7(b)(1)(iii) of the Pension Excise Tax Regulations; and
- (iv) The amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the plan) does not exceed 25 percent of the sum of: (1) the amount of cash contributions actually allocated to participants’ accounts in the plan and (2) the amount of cash contributions used to repay principal with respect to the exempt loan, both determined on an aggregate basis since the inception of the § 401(h) arrangement.

(5) Transactions which include transfers of excess assets from ongoing defined benefit plans to defined contribution plans (including the allocation of excess assets in an ongoing defined benefit plan to separate accounts that are established in that plan creating a plan described in § 414(k)) or transfers in connection with the amendment of a defined benefit plan to create a floor offset arrangement with a defined contribution plan (including the establishment of the separate accounts used as offsets in the plan that had been solely a defined benefit plan resulting in a plan described in § 414(k)).

GATT

.03 Until further notice is given, determination letters, other than those issued for terminating plans, will not include consideration by the Service of any amendments to the qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT). Until such notice is given, plans, other than terminating plans, that include provisions that reflect the GATT amendments to the qualification requirements will not be subject to adverse determination letters by reason of the inclusion of such provisions. However, favorable letters issued for plans, other than terminating plans, may not be relied upon with respect to whether such provisions satisfy the qualification requirements as amended by GATT.

SECTION 4. ON WHAT ISSUES MUST WRITTEN GUIDANCE BE REQUESTED UNDER DIFFERENT PROCEDURES?

Employee Plans and Exempt Organizations

.01 Other procedures for obtaining rulings, determination letters, opinion letters, etc., on matters within the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) are contained in the following revenue procedures:

- (1) National office letter rulings, information letters, etc.: *See* Rev. Proc. 96-4.

(2) Master and Prototype (M&P) plans: *See* Rev. Proc. 89–9, 1989–1 C.B. 780, as modified by Rev. Proc. 90–21, 1990–1 C.B. 499, sections 8.03–8.08 of Rev. Proc. 91–66, Rev. Proc. 92–41, 1992–1 C.B. 870, and Rev. Proc. 93–10, 1993–1 C.B. 476.

(3) Regional prototype plans: *See* Rev. Proc. 89–13, 1989–1 C.B. 801, as modified by Rev. Proc. 90–21, 1990–1 C.B. 499, sections 8.03–8.08 of Rev. Proc. 91–66, Rev. Proc. 92–41, and Rev. Proc. 93–10.

(4) Technical advice requests: *See* Rev. Proc. 96–5, page 129, this Bulletin.

Chief Counsel's revenue procedure

.02 For the procedures for obtaining letter rulings, determination letters, etc., on matters within the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Associate Chief Counsel (International), see Rev. Proc. 96–1, page 8, this Bulletin.

SECTION 5. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?

Scope

.01 This section delineates, generally, the scope of an employee plan determination letter. It identifies certain qualification requirements, relating to nondiscrimination, that are considered by the Service in its review of a plan only at the election of the applicant. This section also identifies certain qualification requirements that are not considered by the Service in its review of a plan and with respect to which determination letters do not provide reliance. This section applies to all determination letters other than letters issued in response to an application filed on Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan; letters relating to the qualified status of group trusts; and letters relating solely to the requirements of § 420, regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h). For additional information pertaining to the scope of reliance on a determination letter, see section 22 of this revenue procedure.

All form and certain non-form requirements generally reviewed

.02 In general, employee plans are reviewed by the Service for compliance with the form requirements (that is, those plan provisions that are required as a condition of qualification under § 401(a)). In addition, certain non-form qualification requirements, including the minimum participation requirements of § 401(a)(26), are considered by the Service in its review of a plan. As described below, certain other nondiscrimination requirements are not considered unless the applicant specifically requests that they be considered.

Nondiscrimination in amount requirement

.03 Unless the applicant elects otherwise, a plan that is not intended to satisfy one of the design-based safe harbors described in §§ 1.401(a)(4)–2(b)(2), 1.401(a)(4)–3(b)(3), 1.401(a)(4)–3(b)(4)(i)(C)(1), 1.401(a)(4)–3(b)(4)(i)(C)(2), 1.401(a)(4)–3(b)(5), 1.401(a)(4)–8(b)(3), or 1.401(a)(4)–8(c)(3)(iii)(B) of the Income Tax Regulations (herein referred to as the “design-based safe harbors”) will not be reviewed for (and a determination letter may not be relied on with respect to) the nondiscrimination in amount of contributions or benefits requirement of § 1.401(a)(4)–1(b)(2).

Average benefit test requirement

.04 Unless the applicant elects otherwise, a plan that does not satisfy the ratio percentage test of § 410(b)(1) and the regulations thereunder will not be reviewed for (and determination letters may not be relied on with respect to) the average benefit test of § 410(b)(2) and the regulations thereunder.

Nondiscriminatory current availability requirement

.05 Any determination letter that expresses an opinion that the plan satisfies the minimum coverage requirements of § 410(b) also will express an opinion that the plan satisfies the nondiscriminatory current availability requirements of § 1.401(a)(4)–4(b) with respect to those benefits, rights, and features that are currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to all employees in the plan's coverage group. The plan's coverage group consists of those employees who are treated as currently benefiting under the plan (within the meaning of § 1.410(b)–3(a)) for purposes of demonstrating that the plan satisfies the minimum coverage requirements of § 410(b). Applications will not be reviewed for (and determination letters may not be relied on with respect to) whether the plan satisfies the requirements of § 1.401(a)(4)–4(b) with respect to any benefit, right, or feature other than the ones described above, except those that are specified by the applicant and for which the applicant has provided information relevant to the determination.

Effective availability requirement

.06 In no event will any plan be reviewed to determine (and determination letters may not be relied on with respect to) whether any benefit, right, or feature under the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c).

Other limits on scope of determination letter

.07 Determination letters may generally be relied on with respect to whether the timing of a plan amendment (or series of amendments) satisfies the nondiscrimination requirements of § 1.401(a)(4)-5(a) of the regulations, unless the plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees. A favorable determination letter does not provide reliance for purposes of § 404 and § 412 with respect to whether an interest rate (or any other actuarial assumption) is reasonable. Furthermore, a favorable determination letter will not constitute a determination with respect to the use of the substantiation guidelines contained in Rev. Proc. 93–42; *e.g.*, a determination letter will not consider whether data submitted with an application is substantiation quality. Lastly, a favorable determination letter will not constitute a determination with respect to whether any requirements of § 414(r), relating to whether an employer is operating qualified separate lines of business, are satisfied. However, if an employer is relying on § 414(r) to satisfy the minimum coverage or minimum participation requirements, a determination letter will take into account whether the plan satisfies the nondiscriminatory classification test of § 410(b)(5)(B), and, if the requirements of § 410(b) or § 401(a)(26) are to be applied on an employer-wide basis under the special rules for employer-wide plans, a determination letter will take into account whether the requirements of the applicable special rule set forth in § 1.414(r)–1(c)(2)(ii) or § 1.414(r)–1(c)(3)(ii) are met.

Good faith

.08 Generally, the nondiscrimination regulations under § 401(a)(4) and certain related sections of the Code apply only to plan years beginning on or after January 1, 1994. In the case of plans maintained by tax-exempt organizations (other than nonelecting church plans described in § 410(c)(1)(B)), the regulations apply only to plan years beginning on or after January 1, 1997. In the case of nonelecting church plans, the regulations apply only to plan years beginning on or after January 1, 1999. A special extended effective date also applies to governmental plans. For plan years beginning before the regulations under § 401(a)(4) are effective for the plan, a plan (other than a governmental plan) must be operated in accordance with a reasonable, good faith interpretation of § 401(a)(4) and certain related sections of the Code. A determination letter may not be relied on as to whether a plan has been operated in accordance with a reasonable, good faith interpretation or whether plan provisions constitute such an interpretation unless the plan has been amended to comply with the regulations retroactively to the 1989 plan year (or, if a later effective date under the TRA '86 is applicable, such later year). Furthermore, the issuance of a favorable determination letter will not preclude an adverse effect on the qualification of a plan resulting from a failure to operate the plan in accordance with a reasonable, good faith interpretation of § 401(a)(4) or related sections of the Code.

SECTION 6. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?

This section contains procedures that are generally applicable to all determination letter requests. Additional procedures for specific requests are contained in sections 7 through 17.

Qualified trustee plans

.01 A trust created or organized in the United States and forming part of a pension, profit-sharing, stock bonus or annuity plan of an employer for the exclusive benefit of its employees or their beneficiaries that meets the requirements of § 401 is a qualified trust and is exempt from federal income tax under § 501(a) unless the exemption is denied under § 502, relating to feeder organizations, or § 503, relating to prohibited transactions, if, in the latter case, the plan is one described in § 503(a)(1)(B).

Qualified nontrustee annuity plans

.02 A nontrustee annuity plan that meets the applicable requirements of § 401 of the Code and other additional requirements as provided under § 403(a) and § 404(a)(2), (relating to deductions of employer contributions for the purchase of retirement annuities), qualifies for the special tax treatment under § 404(a)(2), and the other sections of the Code, if the additional provisions of such other sections are also met.

Complete information required

.03 An applicant requesting a determination letter must file the material required by this revenue procedure with the appropriate key district director. The filing of the application, when accompanied by all information and documents required by this

revenue procedure, will generally serve to provide the Service with the information required to make the requested determination. However, in making the determination, the Service may require the submission of additional information. Information submitted to the Service in connection with an application for determination may be subject to public inspection to the extent provided by § 6104.

Complete copy of plan and trust instrument required

.04 Except in the case of applications involving master and prototype plans filed on Form 5307, or minor amendments described in section 11, a complete copy of the plan and trust instrument is required to be included with the determination letter application. See sections 7.03 and 7.04 for what must be included with applications involving plan amendments that are not minor amendments.

Section 9 of Rev. Proc. 96-4 applies

.05 Section 9 of Rev. Proc. 96-4 is generally applicable to requests for determination letters under this revenue procedure.

Separate application for each single § 414(l) plan

.06 A separate application is required for each single plan within the meaning of § 414(l). This requirement does not pertain to applications regarding the qualified status of group trusts.

Schedule Q

.07 Schedule Q (Form 5300) must be filed with all determination letter applications, other than applications filed on Form 6406, applications relating to the qualified status of group trusts, and applications relating solely to the requirements of § 420. The applicant must indicate on Schedule Q whether a determination of any of the requirements referred to in sections 5.03 through 5.05 is requested, and must include with the application form the material and demonstrations called for in the instructions to Schedule Q.

Prior letters

.08 If the plan has received a favorable determination letter in the past, the application must include a copy of the latest determination letter, if available. If the letter is not available, an explanation must be included with the application.

User fees

.09 The appropriate user fee must be paid according to the procedures of Rev. Proc. 96-8. Form 8717, User Fee for Employee Plan Determination Letter Request, should accompany each determination letter request submitted to a key district office.

Interested party notification and comment

.10 Before filing an application, the applicant requesting a determination letter must satisfy the requirements of § 3001(a) of ERISA, and § 7476(b)(2) of the Code and the regulations thereunder, which provide that an applicant requesting a determination letter on the qualified status of certain retirement plans must notify interested parties of such application. The general rules of the Service with respect to notifying interested parties of requests for determination letters relating to the qualification of plans involving §§ 401 and 403(a) are set out below in sections 18 and 19 of this revenue procedure.

Contrary authority must be distinguished

.11 If the application for determination involves an issue where contrary authorities exist, failure to disclose or distinguish such significant contrary authorities may result in requests for additional information, which will delay action on the application.

Employer/employee relationship

.12 When, in connection with an application for a determination on the qualification of the plan, it is necessary to determine whether an employer-employee relationship exists, the key district director will make such determinations. In such cases, the application with respect to the qualification of the plan should be filed in accordance with the provisions of this revenue procedure, contain the information and documents in the instructions to the application, and be accompanied by a completed Form SS-8, Information for Use in Determining whether a Worker is an Employee for Federal Employment Taxes and Income Tax Withholding, and any information and copies of documents the organization deems appropriate to establish its status. The Service may, in addition, require further information that it considers necessary to determine the employment status of the individuals involved or the qualification of the plan. After the employer-employee relationships have been determined, the key district director may issue a determination letter as to the qualification of the plan.

Incomplete applications returned

.13 If an applicant requesting a determination letter does not comply with all the required provisions of this revenue procedure, the key district director, in his or her discretion, may return the application and point out to the applicant those provisions which have not been met. The request will also be returned pursuant to Rev. Proc. 96-8 if the correct user fee is not attached. If such a request is returned to the applicant, the 270-day period described in § 7476(b)(3) will not begin to run until such time as the provisions of this section have been satisfied.

Effect of failure to disclose material fact

.14 The Service may determine, based on the application form, the extent of review of the plan document. A failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance which would otherwise be obtained through issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance.

Data requirements

.15 The applicant is responsible for the accuracy of any factual representations and conclusions contained in the application. In some circumstances, applicants may not be able to use precise data in preparing demonstrations or schedules that may be required by Schedule Q. Therefore, the use of estimated data in these demonstrations and schedules is not prohibited. In addition, the data used may be for a prior plan year, provided the following conditions are satisfied: (1) the data is the most recent data available, (2) there is no misstatement or omission of material fact with respect to such prior year's data, (3) there has been no material change in the facts (including a change in the benefits provided under the plan and employee demographics) since such prior plan year, (4) the same data is used throughout the application, (5) the data is relevant to the operational effect of the plan provisions that are under review, and (6) the applicant clearly discloses that prior year's data is being submitted with the application. The use of estimated or prior year's data is not a misrepresentation of material fact. A determination letter that is based on estimated or prior year's data, however, may not be relied upon to the extent that such data does not satisfy the substantiation guidelines in Rev. Proc. 93-42.

Where to file request

.16 Requests for determination letters are to be addressed to the key district director specified below, except as indicated.

(1) In the case of a plan of a single employer, the request is to be addressed to the key district director for the district in which the employer's principal place of business is located.

(2) In the case of a multiemployer plan established or proposed by contributing employers with principal places of business located within the jurisdiction of more than one key district director, as an alternative to (1) above, the request may be addressed to the key district director for the district in which the trustee's principal place of business is located. If the plan has more than one trustee, the request may be addressed to the key district director for the district where the trustees usually meet.

(3) In the case of a plan maintained by more than one employer, the applicant or plan administrator must file the appropriate form with the key district director for the key district in which the principal place of business of the plan sponsor is located. This means the principal place of business of the association, committee, joint board of trustees or other similar group, or representatives of those who establish or maintain the plan.

(4) In the case of related employers described in § 414(b), (c), or (m), the request for any plan maintained by any member of the group must be addressed to the key district director for the district where the principal place of business for the group of employers is located.

(5) In the case of a group trust arrangement under Rev. Rul. 81-100, the request on behalf of the master trust must be addressed to the key district director for the district where the principal place of business of the trustee is located. Requests on behalf of the participating trusts and related plans must be addressed as otherwise provided in this section.

Withdrawal of requests

.17 The applicant's request for a determination letter may be withdrawn by a written request at any time prior to the issuance of a final adverse determination letter. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the chief, appeals office. In the case of a withdrawal, the Service will not issue a determination of any type. A failure to issue a determination letter as a result of a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of § 7476. However, the Service may consider the information submitted in connection with the withdrawn request in a subsequent examination. Generally, the user fee will not be refunded if the application is withdrawn.

SECTION 7. INITIAL QUALIFICATION, ETC.

Scope

.01 This section contains the procedures for requesting determination letters for individually designed defined contribution and defined benefit plans including employee stock ownership plans and collectively bargained plans in the following circumstances:

- (1) Initial qualification.
- (2) Amendment (other than minor amendments described in section 11 below for which Form 6406 is appropriate).
- (3) Restatement of plan.
- (4) Qualification of a plan in the event of a partial termination.
- (5) Change in scope of determination letter. This means that the applicant has previously received a favorable determination letter for the plan that takes into account the requirements of the TRA '86 and now wishes to modify the scope of the letter, for example, by requesting the Service to review the plan for certain nondiscrimination requirements that were not within the scope of the earlier letter.
- (6) Other circumstances (excluding plan termination) such as a change in the demographics of the employer or a change in the method of testing the plan that was used in a demonstration submitted in support of an earlier application.

Forms

.02 A determination letter request for the items listed in section 7.01 is made by filing the appropriate form according to the instructions to the form and any prevailing revenue procedures, notices, and announcements.

- (1) Form 5300, Application for Determination for Employee Benefit Plan, must be filed to request a determination letter for plans other than collectively bargained plans.
- (2) Form 5303, Application for Determination for Collectively Bargained Plan, must be filed by a sponsor of a collectively bargained plan. If there is more than one plan, a separate Form 5303 must be filed for each plan.
- (3) Form 5309, Application for Determination of Employee Stock Ownership Plan, must be filed as an attachment with a Form 5300 or Form 5303 (if the ESOP is collectively bargained), in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).
- (4) Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment with Form 5300 and Form 5303.

Application for amendments must include copy of plan

.03 Because a plan amendment, other than a minor amendment described in section 11, may affect other portions of a plan so as to cause plan disqualification, a determination letter issued on such an amendment to a plan will express an opinion on the entire plan, as amended. Therefore, the determination letter application must include a copy of the plan and trust instrument plus all plan amendments made to the date of the application. The application must also include a statement explaining how any amendments made since the last determination letter affect the plan or any other plan maintained by the employer.

Restatements may be required

.04 A restated plan is required to be submitted if four or more amendments (excluding amendments making only non-substantive changes) have been made since the last restated plan was submitted. In addition, the Service may require restatement of a plan or submission of a working copy of the plan in a restated format when considered necessary, for example when there have been major changes in law. A restated plan or a working copy of the plan in a restated format must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of the TRA '86.

Controlled groups, etc.

.05 For a controlled group of corporations as defined in § 414(b), trades or businesses under common control as defined in § 414(c), an affiliated service group within the meaning of § 414(m), and entities utilizing the services of leased employees within the meaning of § 414(n), the coverage items on the application forms referred to in this revenue procedure must be completed as though the controlled group, commonly controlled trades or businesses, affiliated service group, etc., constitutes a single entity. Leased employees within the meaning of § 414(n)

must be included as employees of the recipient entity (except in the case of a safe-harbor plan described in § 414(n)(5)).

SECTION 8. MASTER & PROTOTYPE PLANS; REGIONAL PROTOTYPE PLANS

- Scope** .01 This section contains procedures for requesting determination letters relating to M&P plans or regional prototype plans.
- Determination letter may be necessary for reliance** .02 Except as provided in section 8.05, the issuance of a favorable opinion letter or notification letter for an M&P plan or regional prototype plan does not constitute a determination that an employer adopting the sponsoring organization or sponsor's plan has reliance that the plan is qualified under § 401(a). In order to have reliance, an employer must obtain a favorable determination letter according to this revenue procedure. In general, determination letters are requested for the employer's adoption of an M&P plan or regional prototype plan, or for a change by the employer in the choice of options offered by the sponsoring organization of an M&P plan or sponsor of a regional prototype plan.
- Forms** .03 Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plan, must be filed to request a determination letter for the adoption of an M&P plan or a regional prototype plan. Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment to Form 5307. Form 5307 may also be filed by adopters of pre-approved plans that are single employer collectively bargained plans that benefit only collectively bargained employees described in § 1.410(b)-6(d)(2) and that automatically satisfy the requirements of § 1.410(b)-2(b)(7).
- Required information** .04 The determination letter request must include the following:
- (1) An adoption agreement showing which elections the employer is making with respect to the elective provisions contained in the plan;
 - (2) A copy of the plan's most recent opinion letter or notification letter;
 - (3) In the case of a determination letter request for a regional prototype plan, the application must include a certification by the sponsor that the notification letter has not been withdrawn and is still in effect with respect to the plan being submitted; and
 - (4) In the case of a determination letter request for a regional prototype plan that uses a separate trust or custodial account, a copy of the employer's trust or custodial account document.
- Special rules for standardized plans** .05 The following procedures apply for an employer's adoption of an M&P or regional prototype standardized form plan or paired plan.
- (1) An employer adopting a standardized form or paired plan may rely on that plan's opinion or notification letter, except as provided in section 8.05(2), (3), and (4) below, if the following conditions are satisfied:
 - (a) The sponsoring organization or sponsor of such plan or plans has a currently valid favorable opinion or notification letter; and
 - (b) The employer has followed the terms of the plan(s), and the coverage and contributions or benefits under the plan(s) are not more favorable to highly compensated employees (as defined in § 414(q)) than for other employees.
 - (2) Except in the case of a combination of paired plans, an employer may not rely on opinion letters for standardized form plans without obtaining a determination letter if the employer maintains at any time, or has maintained at any time, another plan, including a standardized form plan, that was qualified or determined to be qualified covering some of the same participants. For this purpose, a plan that has been properly replaced by the adoption of a standardized form plan is not considered another plan. The plan that has been replaced and the standardized form plan must be of the same type (*e.g.*, both money purchase pension plans) in order for the employer to be able to rely on the standardized form plan's opinion or notification letter without obtaining a determination letter.

(3) With respect to M&P plans, a standardized plan sponsored by a trade or professional organization which is adopted by an employer that is not a bona fide member of such organization will be considered an individually designed plan unless the following conditions are satisfied:

(a) The trade or professional organization is exempt from federal income taxation under § 501(c)(6);

(b) The plan is a standardized defined contribution plan;

(c) The trade or professional organization makes the plan available for adoption by nonmember employers by furnishing it to those of its members that independently qualify as sponsoring organizations; and

(d) The requirements of section 5.01(2) through 5.01(5) of Rev. Proc. 90-21 are satisfied.

Amended plan is treated as an individually designed plan

.06 An employer that amends any provision of an M&P plan or regional prototype plan or its adoption agreement (other than to choose among the options offered by the sponsoring organization or sponsor if the plan permits or contemplates such options), or an employer that chooses to discontinue participation in such a plan as amended by its sponsoring organization or sponsor and does not substitute another approved plan referred to in section 8 is considered to have adopted an individually designed plan. The requirements stated in this revenue procedure relating to the issuance of determination letters for individually designed plans will then apply to such plan.

Requests made prior to the issuance of opinion or notification letter

.07 An application submitted by an employer with respect to an M&P plan or regional prototype plan will be treated as an application for an individually designed plan if it is submitted prior to the time the M&P plan or regional prototype plan is approved.

SECTION 9. VOLUME SUBMITTER PLANS

Scope

.01 This section contains procedures for requesting advisory letters and determination letters for volume submitter plans.

Definition of volume submitter plan

.02 A volume submitter plan is a profit-sharing plan (including a § 401(k) plan), a money purchase pension plan or a defined benefit plan, the form of which meets certain criteria established by an individual key district office and which is submitted pursuant to procedures established by the key district office for filing requests for volume submitter advisory letters (with respect to the specimen plan) and requests for determination letters (with respect to the adoption of an approved specimen plan). The Service will not accept volume submitter requests with respect to ESOPs, stock bonus plans, or cross-tested defined contribution plans (other than target benefit plans that satisfy the safe harbor in § 1.401(a)(4)-8(b)(3)).

Purpose of volume submitter program

.03 The volume submitter program enables key district offices to expedite the issuance of determination letters in response to applications for approval of individually designed plans. The program is administered locally by each key district office.

Description of volume submitter program

.04 Under the volume submitter program, a practitioner who qualifies may request the Service to issue an advisory letter regarding a volume submitter specimen plan. A specimen plan is a sample plan of a practitioner (rather than the actual plan of an employer) that contains provisions which are identical or substantially similar to the provisions in plans that such practitioner's clients have adopted or are expected to adopt. Once the Service has approved the specimen plan, the practitioner will be able to file determination letter requests on behalf of employers adopting substantially similar plans.

User fees

.05 Rev. Proc. 96-8 provides reduced user fees for requests under the volume submitter program if certain requirements are satisfied. For adopting employers to be entitled to file a request with the lower fees, the volume submitter practitioner must certify at the time of filing the specimen plan that at least 30 employers within any two regions of the Service are expected to adopt plans that are substantially similar in form to the specimen plan. Also, the volume submitter practitioner must be a representative of the employer when the employer's determination letter application is filed. Although the volume submitter is not required to submit a list of adopting employers, the Service reserves the right to request such a list.

Advisory letter for specimen plan

.06 With respect to advisory letters for volume submitter specimen plans:

(1) A request for approval of a volume submitter specimen plan must be submitted to the key district office in which the practitioner has its principal place of business. The request must include the following:

(a) A copy of the specimen plan and any related specimen trust instrument;

(b) A cover letter requesting approval that includes the certification described in section 9.05 above and indicates the type of plan for which approval is being requested; and

(c) The required user fee submitted with Form 8717, User Fee for Employee Plan Determination Letter Request.

(2) A practitioner who has received approval of a volume submitter specimen plan in a key district office must receive separate approval of the plan from each other key district office in which there are clients adopting substantially similar plans. Once the practitioner has received approval from the key district office in which the practitioner's principal place of business is located, the practitioner may file for approval of the same specimen plan in other key district offices where there are employers who will adopt substantially similar plans. If the practitioner certifies at the time of filing with the second key district office that the specimen plan is identical to a specimen plan approved by another key district office with respect to that practitioner and attaches a copy of that office's advisory letter, then the user fee that would otherwise be charged for the specimen plan will not be charged.

Determination letter for adoption of volume submitter plan

.07 With respect to determination letters for volume submitter plans:

(1) Form 5307, Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plan, is filed to request a determination letter on an employer's adoption of a volume submitter plan, including adopters of single-employer collectively bargained plans that automatically satisfy the requirements of § 1.410(b)-2(b)(7).

(2) Schedule Q, (Form 5300) Nondiscrimination Requirements, must be filed as an attachment to Form 5307.

(3) A copy of the advisory letter for the practitioner's volume submitter specimen plan must be submitted with each Form 5307.

(4) The volume submitter practitioner must be the representative of the employer when the employer's determination letter application is filed.

(5) All applications submitted by adopters of district approved volume submitter plans must be accompanied by a copy of the plan and trust instrument and by a written representation made by the volume submitter which states whether the plan is word-for-word, and if not, explains how the plan and trust instrument are not word-for-word identical to the key district approved specimen plan and which describes the location, nature and effect of each difference from the language of the approved specimen plan. The extent to which the plan and trust instrument may differ from the approved specimen plan will be governed by the procedures of the appropriate key district office.

(6) All applications submitted by adopters of key district approved volume submitter plans must also be accompanied by any other information or material required by the key district office.

(7) All applications for plans that have at any time in the past received a favorable determination letter must submit a copy of the plan's latest determination letter.

SECTION 10. MULTIPLE EMPLOYER PLANS

Scope

.01 This section contains procedures for applications filed with respect to plans described in § 413(c).

Form 5300 and Schedule Q

.02 An application filed with respect to a multiple employer plan must include a completed Form 5300 filed on behalf of one employer and a separate Form 5300 completed through line 8 for each other employer maintaining the plan. One Schedule Q, (Form 5300) Nondiscrimination Requirements, should be filed for the plan. In accordance with the instructions for Schedule Q, separate coverage and other information must be submitted for each employer.

Multiple employer M&P plans

.03 Certain multiple employer plans have in the past received Service approval as M&P plans. In the case of such a plan that will continue to use an adoption agreement format, the application must also include a completed adoption agreement for each employer maintaining the plan. Regardless of whether an adoption agreement format continues to be used for such a plan, the rules of § 1.414(l)-1 will apply in determining whether the plan is a single plan for which only one determination letter will be issued and which requires only one user fee.

Where to file

.04 The complete application, including all Forms 5300 (and, if applicable, adoption agreements) for employers maintaining the plan as of the date of the application, must be filed as one package submission in the key district office where the association maintaining the plan, the trustees, or the plan administrators have their principle place of business. The application is to be directed to the attention of the key district office volume submitter coordinator.

Preliminary approval for certain multiple employer M&P plans

.05 Multiple employer plan applicants who previously received Service approval for a plan as an M&P plan and who will continue to use an adoption agreement format are encouraged to request preliminary approval of the provisions of the plan, including the permitted adoption agreement elections, prior to making the submission described above. Preliminary approval may be requested by submitting a copy of the plan and trust instrument, including a blank adoption agreement, and a copy of the latest opinion letter to the volume submitter coordinator for the key district where the complete application will be filed, requesting preliminary approval pursuant to this procedure. The request should not include an application form or user fee. The key district will notify the applicant in writing if preliminary approval is granted, and the complete application may then be filed. Adopting employers will not be entitled to rely on the preliminary approval as to the qualified status of the plan. If the applicant requests preliminary approval of the plan on or before November 14, 1990, the Service will treat the TRA '86 § 401(b) remedial amendment period for the plan as not expiring earlier than the date that is twelve months after the date of the key district office's preliminary approval.

Determination letter sent to each employer

.06 The Service will mail a copy of the determination letter issued with respect to the plan to each employer maintaining the plan.

Addition of employers

.07 If other employers become participating employers under the plan after a favorable determination letter has been issued, the employers may not continue to rely on such favorable determination letter. However, an applicant may request a determination that the addition of new participating employers to the plan does not adversely affect the plan's qualified status by filing a completed Form 5300 for the plan in the name of the controlling member on the Form 5300 filed pursuant to section 10.02 above, and a supplemental Form 5300 (and, if applicable, adoption agreement) for each new participating employer. The Service will send copies of such a determination only to the applicant and the new participating employers.

SECTION 11. MINOR AMENDMENT OF PREVIOUSLY APPROVED PLAN

Scope

.01 This section contains procedures for requesting determination letters on the effect of a minor plan amendment.

Form 6406

.02 Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan, may be filed to request a determination letter on a minor plan amendment. This form may be used for minor amendments of individually designed plans (including volume submitter plans) or permitted changes to adoption agreement elections in master or prototype or regional prototype plans, provided the changes constitute minor amendments. The Service may also designate other specific amendments which may be submitted using Form 6406.

Additional information

.03 All applications must be accompanied by a copy of the new amendments, a statement as to how the amendments affect or change the plan or any other plan maintained by the employer, and a copy of the latest determination letter. In the case of a master or prototype, regional prototype, or volume submitter plan, a copy of the opinion, notification, or advisory letter should also be included. A copy of the plan or trust instrument should not be filed with the Form 6406.

Minor amendment procedures may not be used for complex amendments

.04 Since determination letters issued on minor amendments express an opinion only as to whether the amendments, in and of themselves, affect the qualification of employee plans under § 401 or 403(a), the minor amendment procedures cannot be used for complex amendments that may affect other portions of the plan so as to cause plan disqualification. Thus, the minor amendment procedures may not be used for an amendment to add a § 401(k) or an ESOP provision to a plan, or to restate a plan. The minor amendment procedures also may not be used to obtain a determination letter on plan amendments involving plan mergers or consolidations, transfers of assets or liabilities, or plan terminations (including partial terminations). In addition, the minor amendment procedures may not be used for an amendment that involves a significant change to plan benefits or coverage.

Key district office has discretion to determine whether use of minor amendment procedures is appropriate employers

.05 The key district office has discretion to determine whether a plan amendment may be submitted as a minor plan amendment. The key district office may request additional information, including the filing of a Form 5300 series application if it determines that the application and the attachments filed under the minor amendment procedures do not contain sufficient information, or that the Form 6406 is inappropriate.

SECTION 12. TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS; NOTICE OF MERGERS, CONSOLIDATIONS, ETC.

Scope

.01 This section contains procedures for requesting determination letters involving plan termination or discontinuance of contributions. This section also contains procedures regarding required notice of merger, consolidation, or transfer of assets or liabilities.

Forms

.02 Required Forms

(1) A Form 5310, Application for Determination for Terminating Plan is filed by plans other than multiemployer plans covered by the insurance program of the Pension Benefit Guaranty Corporation (PBGC).

(2) Form 5303 is filed in the case of a multiemployer plan covered by PBGC insurance.

(3) Schedule Q, (Form 5300) Nondiscrimination Requirements, is required to be filed as an attachment to Form 5310 or Form 5303.

(4) A Form 6088, Distributable Benefits from Employee Pension Benefit Plans, is also required of a sponsor or plan administrator of a defined benefit plan or an underfunded defined contribution plan who files only an application for a determination letter regarding plan termination. For collectively bargained plans, a Form 6088 is required only if the plan benefits employees who are not collectively bargained employees within the meaning of § 1.410(b)-6(d). A separate Form 6088 is required for each employer employing such employees.

(5) Form 5310-A Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, if required, generally must be filed not later than 30 days before merger, consolidation or transfer of assets and liabilities. The filing of Form 5310-A will not result in the issuance of a determination letter.

Required demonstration of nondiscrimination requirements

.03 An applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the average benefit test (if applicable) or the nondiscrimination in amount requirement, as otherwise permitted under sections 5.03 and 5.04, unless the following conditions are satisfied:

(1) with respect to the average benefit test, the plan must have received a favorable determination letter that stated that the plan satisfied the requirements of the test;

(2) with respect to the nondiscrimination in amount requirement, the plan must have received a favorable determination letter that stated that the plan satisfied the requirements of either a nondesign-based safe harbor or the general test for nondiscrimination in amount;

(3) the favorable determination letter was issued during the immediately preceding three plan years; and

(4) there has been no material change in the facts (including benefits provided under the plan and employee demographics) upon which the determination was based.

Compliance with Title IV of ERISA

.04 In the case of plans subject to Title IV of ERISA, a favorable determination letter issued in connection with a plan's termination is conditioned on approval that the termination is a valid termination under Title IV of ERISA. Notification by PBGC that a plan may not be terminated will be treated as a material change of fact.

Termination prior to time for amending for change in law

.05 A plan that terminates after the effective date of a change in law, but prior to the date that amendments are otherwise required, must be amended to comply with the applicable provisions of law from the date on which such provisions become effective with respect to the plan. Because such a terminated plan would no longer be in existence by the required amendment date and therefore could not be amended on that date, such plan must be amended in connection with the plan termination to comply with those provisions of law that become effective with respect to the plan on or before the date of plan termination (such amendments include any amendments made after the date of plan termination that were required in order to obtain a favorable determination letter). In addition, annuity contracts distributed from such terminated plans also must meet all the applicable provisions of any change in law. However, see Notice 88-131, 1988-2 C.B. 546, Rev. Proc. 89-65, 1989-2 C.B. 86, Notice 89-92, 1989-2 C.B. 410, Notice 90-73, 1990-2 C.B. 353, Notice 91-38, 1991-2 C.B. 636, Notice 92-36, 1992-2 C.B. 634, and Announcement 95-48, 1995-23 I.R.B. 13.

SECTION 13. FOREIGN SITUS TRUSTS, FOREIGN EMPLOYERS

Scope

.01 This section contains procedures for requesting determination letters involving foreign situs trusts and foreign employers.

Forms

.02 A domestic employer adopting a foreign situs trust may request a determination letter regarding the qualification of its plan under § 401(a) by filing Form 5300, Form 5303 or Form 5307, whichever is appropriate, and Schedule Q.

Where to file

.03 Such a request should be addressed to the district director for the key district office in which the employer's principal place of business is located. If there is a plan administrator, this material should be filed where the plan administrator is located.

Foreign employers

.04 In the case of a foreign employer and U.S. possessions, the request should be addressed to the:

Internal Revenue Service
EP/EO Division
P.O. Box 17288
Baltimore, MD 21203

SECTION 14. GROUP TRUSTS

Scope

.01 This section provides special procedures for requesting a determination letter on the qualified status of a group trust under Rev. Rul. 81-100.

Required information

.02 A request for a determination letter on the status of a group trust as described in Rev. Rul. 81-100 is made by submitting a written request demonstrating how the group trust satisfies the five criteria listed in Rev. Rul. 81-100, together with the trust instrument and related documents.

SECTION 15. AFFILIATED SERVICE GROUPS; LEASED EMPLOYEES

Scope

.01 This section provides procedures for determination letter requests on affiliated service group status under § 414(m), and the effect of leased employees on a plan's qualified status.

Types of requests under § 414(m) or § 414(n)

.02 An employer that is subject to § 414(m) or (n) may request a determination letter under the following circumstances: (1) with respect to the initial qualification of its plan, (2) on a plan amendment, and (3) in certain circumstances, even though the plan has not been amended (for example, where there has been a change in membership in the affiliated service group or where the employer did not previously have reliance).

Employer must request the determination under § 414(m) or § 414(n)

.03 Generally, a determination letter will cover § 414(m) or § 414(n) only if the employer requests such determination, and submits with the determination letter application the information specified in section 15.09 below.

Forms

.04 Form 5300 (with Schedule Q) is submitted for a request on affiliated service group status or leased employee status. Form 5307 cannot be used for this purpose.

Employer is responsible for determining status under § 414(m) and § 414(n)

.05 An employer is responsible for determining at any particular time whether it is a member of an affiliated service group and, if so, whether its plan(s) continues to meet the requirements of § 401(a) after the effective date of § 414(m), including § 414(m)(5). An employer or plan administrator is also responsible for taking action relative to the employer's qualified plan if that employer becomes, or ceases to be, a member of an affiliated service group. An employer that is the recipient of services of leased employees within the meaning of § 414(n) is also responsible for determining at any particular time whether a leased employee is deemed to be an employee of the recipient for qualified plan purposes.

Omission of material fact

.06 Failure to properly indicate that there is or may be an affiliated service group and to provide the information specified in section 15.09 of this revenue procedure, or failure to properly indicate that an employer is utilizing the services of leased employees and to provide the information specified in section 15.09(11), is an omission of a material fact. The failure of the adopting employer to follow the procedures in this section will result in the employer being unable to rely on any favorable determination letter concerning the effect of § 414(m) or § 414(n) on the qualified status of the plan.

Service will indicate whether § 414(m) or § 414(n) was considered

.07 If the Service considers whether the plan of an employer satisfies the requirements of § 414(m) or § 414(n), the determination letter issued to the employer will state that questions arising under § 414(m) or § 414(n) have been considered, and that the plan satisfies qualification requirements relating to that section. Absent such a statement pertaining to § 414(m) or § 414(n), a determination letter does not apply to any qualification issue arising by reason of such provisions.

M&P plans; regional prototype plans

.08 An employer that has adopted an M&P plan or a regional prototype plan (including a standardized form plan within the meaning of section 3.08 of Rev. Proc. 89-9 or a standardized regional prototype plan within the meaning of section 4.11 of Rev. Proc. 89-13) and wants a determination as to the effect of § 414(m) or § 414(n) on the qualified status of its plan must attach the information required by section 15.09 of this revenue procedure to Form 5300 and submit the information, Form 5300, Schedule Q, and any other materials necessary to make a determination to the appropriate key district office.

Required information

.09 Required information. A determination letter issued with respect to a plan's qualification under § 401(a), 403(a), or 4975(e)(7) will be a determination as to the effect of § 414(m) upon the plan's qualified status only if the application includes:

(1) A description of the nature of the business of the employer, specifically whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reasons therefor;

(2) The identification of other members (or possible members) of the affiliated service group;

(3) A description of the business of each member (or possible member) of the affiliated service group, describing the type of organization (corporation, partnership, etc.) and indicating whether the member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s);

(4) The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in § 414(m)(2)(B)(ii) or § 414(m)(6)(B));

(5) A description of services performed for the employer by the members (or possible members) of the affiliated service group, or vice versa (including the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether such services

are a significant portion of the member's business) and whether, as of December 13, 1980, it was not unusual for the services to be performed by employees of organizations in that service field in the United States;

(6) A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties;

(7) In the case of a management organization under § 414(m)(5):

(a) a description of the management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other members (or possible members) of the group (including data explaining whether the management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States;

(b) if management functions are performed by the employer for the member (or possible members) of the affiliated service group, a description of what part of the employer's business constitutes the performance of management functions for the member (or possible member) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities);

(8) A brief description of any other plan(s) maintained by the members (or possible members) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested;

(9) A description of how the plan(s) satisfies the coverage requirements of § 410(b) if the members (or possible members) of the affiliated service group are considered part of an affiliated service group with the employer;

(10) A copy of any ruling issued by the national office on whether the employer is an affiliated service group; a copy of any prior determination letter that considered the effect of § 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or determination letter issued to any other member (or possible member) of the same affiliated service group, accompanied by a statement as to whether the facts upon which the ruling or determination letter was based have changed.

(11) Unless the plan provides that all leased employees within the meaning of § 414(n)(2) are treated as common law employees for all purposes under the plan, a determination letter issued with respect to the plan's qualification under § 401(a) or 403(a) will be a determination as to the effect of § 414(n) upon the plan's qualified status only if the application includes:

(a) A description of the nature of the business of the recipient organization;

(b) A copy of the relevant leasing agreement(s);

(c) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis) and whether it is not unusual for the services to be performed by employees of organizations in the recipient organization's business field in the United States; and

(d) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees which are attributable to services performed for the recipient organization, plan eligibility, and vesting).

SECTION 16. WAIVER OF MINIMUM FUNDING

Scope

.01 This section provides procedures with respect to defined contribution plans for requesting a waiver of the minimum funding standard account and requesting a determination letter on any plan amendment required for the waiver.

Applicability of Rev. Proc. 94-41

.02 The procedures of Rev. Proc. 94-41, 1994-1 C.B. 711, which supersedes Rev. Proc. 83-41, 1983-1 C.B. 775, as modified by Rev. Proc. 88-5, 1988-1 C.B. 587, and Rev. Proc. 88-29, 1988-1 C.B. 828, apply to the request for a waiver of the minimum funding requirement.

Waiver and determination letter request submitted to national office

.03 Under this section, both the request for a waiver ruling and the request for a determination letter on the effect of any amendment necessary to satisfy section 3 of Rev. Rul. 78-223, 1978-1 C.B. 125, must be submitted by the taxpayer to the national office where it will be treated as a mandatory request for technical advice. The request that is submitted to the national office must include the following:

- (1) All the procedural requirements described in section 2 of Rev. Proc. 94-41 must be satisfied;
- (2) The submission must include a completed Form 5300 (with Schedule Q) and all necessary documents, plan amendments, and information required by the Form 5300 and by this revenue procedure for approval of the plan amendments;
- (3) The request must indicate which key district office has audit jurisdiction over the return; and
- (4) The request and the applicable user fee (required by Rev. Proc. 96-8) for both the waiver request and the determination letter request should be sent to:

Internal Revenue Service
Assistant Commissioner (Employee Plans and Exempt Organizations)
Attention: CP:E:EP:A:1
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044

Additional information sent after the initial request should be sent to:

Chief, Actuarial Branch 1
CP:E:EP:A:1
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Handling of the request

.04 The waiver request will be handled by the national office as follows:

- (1) The waiver request and supporting documents will be forwarded to Actuarial Branch, CP:E:EP:A:1, which will treat the request as a technical advice on the qualification issue with respect to the plan provisions necessary to satisfy section 3 of Rev. Rul. 78-223.
- (2) The appropriate key district office will be notified of the request. In order not to delay the processing of the request, all materials relating to the determination letter request will be sent by the national office to the key district director for consideration while the technical advice request is completed.
- (3) The national office will consider both the application for a funding waiver and the proposed plan amendment. If a waiver is to be granted and if the national office believes that qualification of the plan is not adversely affected by the plan amendment, the mandatory technical advice memorandum will be issued to the key district director. The key district director must decide within 10 working days from the date of the technical advice memorandum either to furnish the applicant with the technical advice memorandum and with a favorable advance determination letter, or to ask for reconsideration of the technical advice memorandum. This request must be in writing. An initial written notice of an intent to make this request may be submitted within 10 working days of the date of the technical advice memorandum and followed by a written request within 30 working days from the date of such written notice. If the key district director does not ask for reconsideration of the technical advice memorandum within 10 working days, the Actuarial Branch will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02 of Rev. Proc. 94-41.

Interested party notice and comment

.05 The notice and comment requirements for interested parties provided in sections 18 and 19 of this revenue procedure must be satisfied. Comments are to be forwarded to the key district office that is considering the determination letter request for the plan amendments. With respect to the waiver request the notice requirements applicable to waiver requests found in Rev. Proc. 94-41 must be satisfied.

When waiver request should be submitted

.06 In the case of a plan other than a multiemployer plan, no waiver may be granted under § 412(d) with respect to any plan for any plan year unless an application therefor is submitted to the Service not later than the 15th day of the third month beginning after the close of such plan year. The Service may not extend this deadline. A request for a waiver with respect to a multiemployer plan generally must be submitted no later than the close of the plan year following the plan year for which the waiver is requested.

In seeking a waiver with respect to a plan year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advisable that such advance request be submitted no earlier than 180 days prior to the end of the plan year for which the waiver is requested.

SECTION 17. SECTION 420 DETERMINATION LETTERS

Scope

.01 This section provides procedures for requesting determination letters on plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h).

Required Information

.02 The key district director will consider the qualified status of plan language designed to comply with § 420 only if the plan sponsor requests such consideration in a cover letter. The cover letter must specifically state (i) whether consideration is being requested only with regard to § 420, or (ii) whether consideration is being requested with regard to § 420 in addition to other matters under § 401(a). The cover letter must specifically state the location of a plan provision that satisfies each of the following requirements. The checklist in the Appendix of this revenue procedure may be used to identify the location of relevant plan provisions.

(1) The plan must include a health benefits account as described in § 401(h).

(2) The plan must provide that transfers shall be limited to transfers of “excess assets” as defined in § 420(e)(2).

(3) The plan must provide that only one transfer may be made in a taxable year. However, for purposes of determining whether the rule in the preceding sentence is met, a plan may provide that a transfer will not be taken into account if it is a transfer that:

(a) is made after the close of the taxable year preceding the employer’s first taxable year beginning after December 31, 1990, and before the earlier of (i) the due date (including extensions) for the filing of the return of tax for such preceding year, or (ii) the date such return is filed; and

(b) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(4) The plan must provide that the amount transferred shall not exceed the amount which is reasonably estimated to be the amount the employer will pay out (whether directly or through reimbursement) of the health benefit account during the taxable year of the transfer for “qualified current retiree health liabilities”, as defined in § 420(e)(1).

(5) The plan must provide that no transfer will be made in any taxable year beginning after December 31, 2000.

(6) The plan must provide that any assets transferred, and any income allocable to such assets, shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer.

(7) The plan must provide that any amounts transferred to a health benefits account (and income attributable to such amounts) which are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the plan.

(8) The plan must provide that the amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets.

(9) The plan must provide that the accrued pension benefits for participants and beneficiaries must become nonforfeitable as if the plan had terminated immediately prior to the transfer (or in the case of a participant who separated during the 1-year period ending on the date of transfer immediately before such separation). In the case of a transfer described in § 420(b)(4) that relates to a prior year, the plan must provide that the accrued benefit of a participant who separated from service during the taxable year to which such transfer relates will be recomputed and treated as nonforfeitable immediately before such separation.

(10) The plan must provide that a transfer will be permitted only if each group health plan or arrangement under which health benefits are provided contains provisions satisfying § 420(c)(3). The plan must define “applicable employer cost”, “cost maintenance period”, and “benefit maintenance period”, as applicable, consistent with § 420(c)(3). The plan may provide that § 420(c)(3) is satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(11) The plan must provide that transferred assets cannot be used for key employees (as defined in § 416(i)(1)).

PART II. INTERESTED PARTY NOTICE AND COMMENT

SECTION 18. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476-1(b), have the following rights:

(1) To receive notice, in accordance with section 19 below, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409 and/or 4975(e)(7);

(2) To submit written comments with respect to the qualification of such plans to the Service;

(3) To request the Department of Labor to submit a comment to the Service on behalf of the interested parties; and

(4) To submit written comments to the Service on matters with respect to which the Department of Labor was requested to comment but declined.

Comments by interested parties

.02 Comments submitted by interested parties must be received by the key district director by the 45th day after the day on which the application for determination is received by the key district director. (However, see sections 18.03 and 18.04 for filing deadlines where the Department of Labor has been requested to comment). Such comments must be in writing, signed by the interested parties or by an authorized representative of such parties (as provided in section 9.01(7) of Rev. Proc. 96-4), addressed to the key district director to whom the application for determination was submitted, and contain the following information:

(1) The names of the interested parties making the comments;

(2) The name and taxpayer identification number of the applicant for a determination;

(3) The name of the plan, the plan identification number, and the name of the plan administrator;

(4) Whether the parties submitting the comment are:

(a) Employees eligible to participate under the plan,

(b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan,

(c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan,

(d) Employees not eligible to participate under the plan.

(5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and

(6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent. (The address designated for notice by the Service will also be used by the Department of Labor in communicating with the parties submitting a request for comment.) The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5) of the Code.

Requests for DOL to submit comments

.03 A request to the Department of Labor to submit to the key district director a comment pursuant to § 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the Department of Labor by the 25th day after the day the application for determination is received by the key district director. However, if the parties requesting the Department to submit a comment wish to preserve the right to comment to the key district director in the event the Department declines to comment, the request must be received by the Department by the 15th day after the day the application for determination is received by the key district director.

(2) The request to the Department of Labor to submit a comment to the key district director must:

(a) Be in writing;

(b) Be signed as provided in section 18.02 above;

(c) Contain the names of the interested parties requesting the Department to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent. See also section 18.02(6) above;

(d) Contain the information prescribed in section 18.02(2), (3), (4), (5) and (6) above;

(e) Contain the address of the key district director to whom the application was or will be submitted;

(f) Contain a statement of the specific matters upon which the Department's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) Be addressed as follows:

Deputy Assistant Secretary
Pension and Welfare Benefits Administration
U.S. Department of Labor,
200 Constitution Avenue, N.W.,
Washington, D.C. 20210
Attention: 3001 Comment Request

Right to comment if DOL declines to comment

.04 If a request described in 18.03 is made and the Department of Labor notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to the key district director on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by the key district director or the 15th day after the day on which notification is given by the Department that it declines to submit a comment on such matter. (See section 18.07 for the date of notification.) In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with the

requirements of section 18.02 and include a statement that the comment is being submitted on matters raised in a request to the Department upon which the Department declined to comment.

Confidentiality of comments

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 18.02 or 18.04, see § 601.201(o)(5) of the Statement of Procedural Rules.

Availability of comments

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 18.01(1), (2), (3) and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

When comments are deemed made

.07 An application for an advance determination, a comment to the key district director, or a request to the Department of Labor shall be deemed made when it is received by the key district director, or the Department. Notification by the Department that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 19.01 below shall be deemed given when it is given in person, posted as prescribed in the regulations under § 7476 of the Code, or received through the mail. In any case where such an application, comment, request, notification, or notice is sent by mail, it shall be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration), if it is deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly addressed. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date of postmark, the immediately preceding sentence shall not apply.

SECTION 19. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan described in §§ 401, 403(a), 409 and 4975(e)(7) is to be made must be given to all interested parties in the manner set forth in § 1.7476-2(c) and in accordance with the requirements of this section.

Time when notice must be given

.02 When the notice referred to in section 19.01 is given by posting or in person, such notice must be given not less than 7 days nor more than 21 days prior to the day the application for a determination is made. When the notice is given by mailing, it should be given not less than 10 days nor more than 24 days prior to the day the application for a determination is made. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested parties, the applicant need not cause notice to be given to those groups or classes of interested parties with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations of this subsection would not be met.

Content of notice

.03 The notice referred to in section 19.01 shall be in writing and shall contain the following information:

(1) A brief description identifying the class or classes of interested parties to whom the notice is addressed (*e.g.*, all present employees of the employer, all present employees eligible to participate);

(2) The name of the plan, the plan identification number, and the name of the plan administrator;

(3) The name and taxpayer identification number of the applicant for a determination;

(4) That an application for a determination as to the qualified status of the plan is to be made to the Service, stating whether the application relates to an initial qualification, a plan amendment, termination, or a partial termination and the address of the key district director to whom the application will be submitted;

(5) A description of the class of employees eligible to participate under the plan;

(6) Whether or not the Service has issued a previous determination as to the qualified status of the plan;

(7) A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor to submit, to the key district director described in section 19.03(4), a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons request the Department of Labor to submit a comment and the Department of Labor declines to do so with respect to one or more matters raised in the request, the persons may still submit a comment to the key district director with respect to the matters on which the Department declines to comment. The PBGC may also submit comments. In every instance where there is either a final adverse termination or a distress termination, the Service formally notifies the PBGC for comments;

(8) The specific dates by which a comment to the key district director or a request to the Department of Labor must be received in order to preserve the right of comment (see section 18 above);

(9) The number of interested parties needed in order for the Department of Labor to comment; and

(10) Except to the extent that the additional informational material required to be made available by sections 19.05 through 19.09 are included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (see section 19.04). (Examples of notices setting forth the above information, in a case in which the additional information required by sections 19.05 through 19.09 will be made available at places accessible to the interested parties, are set forth in the Exhibit attached to this revenue procedure.)

.04 The procedure referred to in section 19.03(10), whereby the additional informational material required by sections 19.05 through 19.09 will (to the extent not included in the notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material in person or by mail, or by a combination of the foregoing, provided such procedure is immediately available to all interested parties, is designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and is available until the earlier of: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

.05 Unless provided in the notice, or unless section 19.06 applies, there shall be made available to interested parties under a procedure described in section 19.04:

- (1) An updated copy of the plan and the related trust agreement (if any); and
- (2) The application for determination.

.06 If there would be less than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 19.05 available to interested parties who are not participants (as described above), there may be made available to such interested parties a document containing the following information:

- (1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;
- (2) A description of the provisions providing for nonforfeitable benefits;
- (3) A description of the circumstances which may result in ineligibility, or denial or loss of benefits;
- (4) A description of the source of financing of the plan and the identity of any organization through which benefits are provided;
- (5) A description of any optional forms of benefits described in § 411(d)(6) which have been reduced or eliminated by plan amendment; and

Procedures for making information available to interested parties

Information to be available to interested parties

Special rules if there are less than 26 participants

(6) Whether the applicant is claiming in the application that the plan meets the requirements of § 410(b)(1)(A), and, if not, the coverage schedule required by the application in the case of plans not meeting the requirements of such section. However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (whether or not the plan has less than 26 participants) an updated copy of the plan and related trust agreement (if any) and the application for determination.

Information described in § 6104(a)(1)(D) should not be included

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to the Service. Accordingly, such information should not be included in any of the material required by section 19.05 or 19.06 to be available to interested parties.

Availability of additional information to interested parties

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 19.04, any additional document dealing with the application which is submitted by or for the applicant to the Service, or furnished by the Service to the applicant; provided, however, if there would be less than 26 participants in the plan as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), such additional documents need not be made available to interested parties who are not participants (as described above) until they, or their designated representative, receive a notice of final determination. The applicant may also withhold from such inspection and copying information described in § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

Availability of notice to interested parties

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 19.04 the material described in sections 19.02 through 19.07 above.

PART III. PROCESSING DETERMINATION LETTER REQUESTS

SECTION 20. HOW DOES THE SERVICE HANDLE DETERMINATION LETTER REQUESTS?

Oral advice

.01 Oral advice.

(1) The Service does not issue determination letters on oral requests. However, personnel in the key district offices ordinarily will discuss with taxpayers or their representatives inquiries regarding: substantive tax issues; whether the Service will issue a determination letter on particular issues; and questions relating to procedural matters about submitting determination letter requests. Any discussion of substantive issues will be at the discretion of the Service on a time available basis, will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). A taxpayer may seek oral technical assistance from a taxpayer service representative in a district office or Service Center when preparing a return or report, under established procedures. Oral advice is advisory only, and the Service is not bound to recognize it in the examination of the taxpayer's return.

(2) The advice or assistance furnished, whether requested by personal appearance, telephone, or correspondence will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, revenue procedures, and revenue rulings that may aid the inquirer in resolving the question or problem.

Conferences

.02 A key district director may grant a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and the key district director concludes that a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted.

Determination letter based solely on administrative record

.03 Administrative Record

(1) In the case of a request for a determination letter, the determination of the key district director or the appeals office on the qualification or non-qualification of the retirement plan shall be based solely upon the facts contained in the administrative record. The administrative record shall consist of the following:

(a) The request for determination, the retirement plan and any related trust instruments, and any written modifications or amendments made by the applicant during the proceedings within the Service;

(b) All other documents submitted to the Service by, or on behalf of, the applicant with respect to the request for determination;

(c) All written correspondence between the Service and the applicant with respect to the request for determination and any other documents issued to the applicant from the Service;

(d) All written comments submitted to the Service pursuant to sections 18.01(1), (2), and (3) above, and all correspondence relating to comments submitted between the Service and persons (including PBGC and the Department of Labor) submitting comments pursuant to sections 18.01(1), (2), and (3) above;

(e) In any case in which the Service makes an investigation regarding the facts as represented or alleged by the applicant in the request for determination or in comments submitted pursuant to sections 18.01(1), (2), and (3) above, a copy of the official report of such investigation;

(2) The administrative record shall be closed upon the earlier of the following events:

(a) The date of mailing of a notice of final determination by the Service with respect to the application for determination; or

(b) The filing of a petition with the United States Tax Court seeking a declaratory judgment with respect to the retirement plan.

(3) Any oral representation or modification of the facts as represented or alleged in the application for determination or in a comment filed by an interested party, which is not reduced to writing shall not become a part of the administrative record and shall not be taken into account in the determination of the qualified status of the retirement plan by the key district director, or the appeals office.

Notice of final determination

.04 In the case of final determination, the notice of final determination

(1) shall be the letter issued by the key district director, or the appeals office which states that the applicant's plan satisfies the qualification requirements of the Code. The favorable determination letter will be sent by certified or registered mail where either an interested party, the Department of Labor, or the PBGC has commented on the application for determination.

(2) shall be the letter issued, by certified or registered mail, by the key district director, or the appeals office subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Code.

Issuance of the notice of final determination

.05 The key district director, or the appeals office will send the notice of final determination to the applicant, to the interested parties who have previously submitted comments on the application to the Service (or to the persons designated by them to receive such notice), to the Department of Labor in the case of a comment submitted by the Department, and to PBGC if it has filed a comment.

Key district offices

.06 Following are the key district offices that issue determination letters and the areas covered by each:

KEY DISTRICT IRS DISTRICTS COVERED

Cincinnati	Indiana, Kentucky, Michigan, Ohio, West Virginia
Baltimore	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. possession or foreign country
Chicago	Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin

Brooklyn	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont
Atlanta	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee
Dallas	Arizona, Colorado, Kansas, Oklahoma, New Mexico, Texas, Utah, Wyoming
Los Angeles	Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington

NOTE: The preceding list does not reflect the reorganization of districts and regions pursuant to Treasury Order No. 150-01, dated September 28, 1995, 1995-44 I.R.B. 23. Previously, on January 28, 1995, the Commissioner of Internal Revenue announced that the Service will centralize its employee plans and exempt organizations determination letter program in Cincinnati, Ohio. The centralization will be phased in, one key district at a time, beginning in 1996. Announcement 95-51, 1995-25 I.R.B. 132, states that the Service will notify the public in advance of the phase in of each key district office. Until such notice is given, employers and organizations should continue to submit their requests for determination letters to the key district offices designated above.

SECTION 21. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In general

.01 For purposes of § 7476(b)(3), a petitioner shall be deemed to have exhausted the administrative remedies available within the Service upon the completion of the steps described in sections 21.02, 21.03, 21.04, or 21.05 subject, however, to sections 21.06 and 21.07. If applicants, interested parties, or the PBGC do not complete the applicable steps described below, they will not have exhausted their respective available administrative remedies as required by § 7476(b)(3) and will, thus, be precluded from seeking declaratory judgment under § 7476 except to the extent that section 21.05 or 21.08 applies.

Steps for exhausting administrative remedies

.02 In the case of an applicant, with respect to any matter relating to the qualification of a plan, the steps referred to in section 21.01 are:

- (1) Filing a completed application with the appropriate Key District Director pursuant to this revenue procedure;
- (2) Complying with the requirements pertaining to notice to interested parties as set forth in this revenue procedure and § 1.7476-2 of the regulations; and,
- (3) Appealing to the Appeals Office pursuant to paragraph 601.201(o)(6) of the Statement of Procedural Rules, in the event a notice of proposed adverse determination is issued by the key district director.

Applicant's request for 7805(b) relief

.03 Consideration of relief under § 7805(b) will be included as one of the applicant's steps in exhausting administrative remedies only if the applicant requests the key district director to seek technical advice from the national office on the applicability of such relief. The applicant's request must be made in writing according to the procedures for requesting technical advice (*see* section 18 of Rev. Proc. 96-5).

Interested parties

.04 In the case of an interested party or the PBGC, the steps referred to in section 21.01 are, with respect to any matter relating to the qualification of the plan, submitting to the Key District Director a comment raising such matter in accordance with section 18.01(1) above, or requesting the Department of Labor to submit to the key district director a comment with respect to such matter in accordance with section 18.01(2) and, if the Department of Labor declines to comment, submitting the comment in accordance with section 18.01(3) above, so that it may be considered by the Service through the administrative process.

Deemed exhaustion of administrative remedies

.05 An applicant, an interested party, or the PBGC shall in no event be deemed to have exhausted administrative remedies prior to the earlier of:

- (1) The completion of those steps applicable to each as set forth in sections 21.01, 21.02, 21.03 or 21.04, which constitute their administrative remedies; or,
- (2) The expiration of the 270-day period described in § 7476(b)(3), which period shall be extended in a case where there has not been a completion of all the steps referred to in section 21.02 and the Service has proceeded with due diligence in processing the application for determination.

Service must act on appeal

.06 The step described in section 21.02(3) will not be considered completed until the Service has had a reasonable time to act upon the appeal.

Service must act on § 7805(b) request

.07 Where the applicant has requested the key district director to seek technical advice on the applicability of § 7805(b) relief, the applicant's administrative remedies will not be considered exhausted until the national office has had a reasonable time to act upon the request for technical advice.

Effect of technical advice request

.08 The step described in section 21.02(3) will not be available or necessary with respect to any issue on which technical advice has been obtained from the national office.

SECTION 22. WHAT EFFECT WILL AN EMPLOYEE PLAN DETERMINATION LETTER HAVE?

Scope of reliance on determination letter

.01 A determination letter issued pursuant to this revenue procedure contains only the opinion of the Service as to the qualification of the particular plan involving the provisions of §§ 401 and 403(a) and the status of a related trust, if any, under § 501(a). Such a determination letter is based on the facts and demonstrations presented to the Service in connection with the application for the determination letter and may not be relied upon after a change in material fact or the effective date of a change in law, except as provided. For example, a determination letter issued pursuant to this revenue procedure may not be relied upon after a significant change in plan coverage resulting from the operation of the plan. The Service may determine, based on the application form, the extent of review of the plan document. Failure to disclose a material fact or misrepresentation of a material fact may adversely affect the reliance which would otherwise be obtained through the issuance by the Service of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance. Applicants are advised to retain copies of all demonstrations and supporting data submitted with their applications. Failure to do so may limit the scope of reliance.

Effect of determination letter on minor plan amendment

.02 Determination letters issued on minor amendments to plans and trusts under this revenue procedure will merely express an opinion whether the amendment, in and of itself, affects the existing status of the plan's qualification and the exempt status of the related trust. In no event should such a determination letter be construed as an opinion on the qualification of the plan as a whole and the exempt status of the related trust as a whole.

Sections 12 and 13 of Rev. Proc. 96-4 applicable

.03 Except as otherwise provided in this section, determination letters referred to in sections 22.01 and 22.02 are governed, generally, by the provisions of sections 12 and 13 of Rev. Proc. 96-4.

Effect of subsequent publication of revenue ruling, etc.

.04 The prior qualification of a plan as adopted by an employer will not be considered to be adversely affected by the publication of a revenue ruling, a revenue procedure, or an administrative pronouncement within the meaning of § 1.6661-3(b)(2) of the regulations where:

- (1) The plan was the subject of a favorable determination letter and the request for that letter contained no misstatement or omission of material facts;
- (2) The facts subsequently developed are not materially different from the facts on which the determination letter was based;
- (3) There has been no change in the applicable law; and
- (4) The employer that established the plan acted in good faith in reliance on the determination letter.

However, all such plans must be amended to comply with the published revenue ruling for subsequent years. The conforming amendment to an individually designed plan must be adopted before the end of the first plan year that begins after the revenue ruling, revenue procedure, or administrative pronouncement is published in the Internal Revenue Bulletin and must be effective, for all purposes, not later than the first day of the first plan year beginning after the revenue ruling is published. For the rule as to the conforming amendment to an M&P plan and a regional prototype plan, see section 14 of Rev. Proc. 89-9 and Rev. Proc. 89-13, as modified by Rev. Proc. 90-21, sections 8.03-8.08 of Rev. Proc. 91-66, and Rev. Proc. 92-41.

Determination letter does not apply to taxability issues

.05 While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. This latter determination can be made only upon an examination of the employer's tax return, in accordance with the limitations, and subject to the conditions of, § 404.

SECTION 23. EFFECT ON OTHER REVENUE PROCEDURES

Superseded revenue procedure

.01 Rev. Proc. 93-39, with the exception of section 12 and section 13, is superseded. Rev. Proc. 94-37, which modified Rev. Proc. 93-39, is also superseded.

Superseded revenue procedures

.02 Rev. Proc. 81-19 and Rev. Proc. 95-6 are superseded.

SECTION 24. EFFECTIVE DATE

This revenue procedure is effective January 2, 1996. The Service will, however, continue to accept determination letter applications filed in accordance with the instructions in Rev. Proc. 93-39, as modified by Rev. Proc. 94-37, through the 120th day following the date of the Service's announcement in the Internal Revenue Bulletin of the availability of the revised 5300 series forms and new Schedule Q (Form 5300).

DRAFTING INFORMATION

The principal author of this revenue procedure is Sanford Karo of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 4:00 p.m. Eastern time, Monday through Thursday, on (202) 622-6074 (not a toll-free call). Mr. Karo can be contacted by calling (202) 622-6214 (also not a toll-free call).

EXHIBIT: SAMPLE NOTICES TO INTERESTED PARTIES

The Exhibit set forth below, may be used to satisfy the requirements of section 19 of this revenue procedure.

Exhibit: Sample Notice to Interested Parties

1. Notice To: _____ [describe class or classes of interested parties]
 An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:
2. _____
 (name of plan)
3. _____
 (plan number)
4. _____
 (name and address of applicant)
5. _____
 (applicant EIN)
6. _____
 (name and address of plan administrator)
7. The application will be filed on _____ with the Key District Director, Internal Revenue Service at _____ for an advance determination as to whether the plan meets the qualification requirements of § 401 or 403(a) of the Internal Revenue Code of 1986, with respect to the plan’s _____ [initial qualification, amendment, termination, or partial termination].
8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service _____ [has/has not] previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to the Key District Director, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

 You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to the Key District Director regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to the Key District Director.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lessor of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is _____. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:
 - (1) the information contained in items 2 through 5 of this Notice; and
 - (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
 Pension and Welfare Benefits Administration
 ATTN: 3001 Comment Request
 U.S. Department of Labor,
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to the Key District Director must be in writing and received by him by _____ . However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to the Key District Director to be received by him within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by _____ , whichever is later, but not after _____. A request to the Department to comment on your behalf must be received by it by _____ if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by _____ if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 18 and 19 of Rev. Proc. 96-6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 18 of Rev. Proc. 96-6 are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

APPENDIX

Checklist As part of a § 420 determination letter request described in section 17 of this revenue procedure the following checklist may be completed and attached to the determination letter request:

ITEM	CIRCLE	SECTION
1. Does the Plan contain a medical benefits account within the meaning of § 401(h) of the Code? If the medical benefits account is a new provision, items “a” through “h” should be completed.	Yes No	_____
a. Does the medical benefits account specify the medical benefits that will be available and contain provisions for determining the amount which will be paid?	Yes No	_____
b. Does the medical benefits account specify who will benefit?	Yes No	_____
c. Does the medical benefits account indicate that such benefits, when added to any life insurance protection in the Plan, will be subordinate to retirement benefits?	Yes No	_____
d. Does the medical benefits account maintain separate accounts with respect to contributions to key employees (as defined in § 416(i)(1) of the Code) to fund such benefits?	Yes No	_____
e. Does the medical benefits account state that amounts contributed must be reasonable and ascertainable?	Yes No	_____
f. Does the medical benefits account provide for the impossibility of diversion prior to satisfaction of liabilities (other than item “7” below)?	Yes No	_____
g. Does the medical benefits account provide for reversion upon satisfaction of all liabilities (other than item “7” below)?	Yes No	_____
h. Does the medical benefits account provide that forfeitures must be applied as soon as possible to reduce employer contributions to fund the medical benefits?	Yes No	_____
2. Does the Plan limit transfers to “Excess Assets” as defined in § 420(e)(2) of the Code?	Yes No	_____
3. Does the Plan provide that only one transfer may be made in a taxable year (except with regard to transfers relating to prior years pursuant to § 420(b)(4) of the Code)?	Yes No	_____
4. Does the Plan provide that the amount transferred shall not exceed the amount reasonably estimated to be paid for qualified current retiree health liabilities?	Yes No	_____
5. Does the Plan provide that no transfer will be made in any taxable year beginning after December 31, 2000?	Yes No	_____
6. Does the Plan provide that transferred assets and income attributable to such assets shall be used only to pay qualified current retiree health liabilities for the taxable year of transfer?	Yes No	_____
7. Does the Plan provide that any amounts transferred (plus income) that are not used to pay qualified current retiree health liabilities shall be transferred back to the defined benefit portion of the Plan?	Yes No	_____
8. Does the Plan provide that amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets?	Yes No	_____
9. Does the Plan provide that participants’ accrued benefits become nonforfeitable on a termination basis (i) immediately prior to transfer, or (ii) in the case of a participant who separated within 1 year before the transfer, immediately before such separation?	Yes No	_____
10. In the case of transfers described in § 420(b)(4) of the Code relating to 1990, does the Plan provide that benefits will be recomputed and become nonforfeitable for participants who separated from service in such prior year as described in § 420(c)(2)?	Yes No	_____
11. Does the Plan provide that transfers will be permitted only if each group health plan or arrangement contains provisions satisfying § 420(c)(3) of the Code?	Yes No	_____
12. Does the Plan define “applicable employer cost”, “cost maintenance period” and “benefit maintenance period”, as needed, consistently with § 420(c)(3) of the Code?	Yes No	_____
13. Does the Plan provide that transferred assets cannot be used for key employees?	Yes No	_____

Rev. Proc. 96-7

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 Purpose

This revenue procedure updates Rev. Proc. 95-7, 1995-1 C.B. 482 by providing a list of subject matters under the jurisdiction of the Associate Chief Counsel (International) in which the Internal Revenue Service will not issue advance letter rulings or determination letters. Rev. Proc. 96-3, page 82, this Bulletin, lists the subject matters under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Service will not issue advance letter rulings or determination letters.

.02 Changes

New section 4.01.25, dealing with various issues that arise in determining whether an intermediate entity is a conduit entity for purposes of sections 881, 882, 1441 or 1442, has been added to reflect the Service's view that the stated issues require fact and circumstance determinations that are not the proper subject of advance letter rulings and determination letters.

SEC. 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background

Whenever appropriate to sound tax administration, the Service answers inquiries from individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions, before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue advance letter rulings or determination letters, either because the issues are inherently factual or for other reasons. This revenue procedure lists those areas.

Section 3 gives areas in which advance letter rulings and determinations will not be issued under any circumstances. Section 4 gives areas in which they will not ordinarily be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should contact

(by telephone or in writing) the Office of Associate Chief Counsel (International) (hereinafter "the Office") prior to making such request and discuss with the Office the unique and compelling reasons that the taxpayer believes justify issuing such letter ruling or determination letter. While not required, a written submission is encouraged since it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission. The Service may provide a general information letter in response to inquiries in areas on either list.

These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case; such decisions will not be announced in the Internal Revenue Bulletin.

.02 Scope of Application

This revenue procedure does not preclude District Directors, the Assistant Commissioner (International), or Chiefs, Appeals Offices from submitting requests for technical advice in the areas listed to the Office.

SEC. 3. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific Questions and Problems

1. Section 871(g).—Special Rules for Original Issue Discount.—Whether a debt instrument having original issue discount within the meaning of § 1273 of the Internal Revenue Code is not an original issue discount obligation within the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

2. Section 894.—Income Affected by Treaty.—Whether a person that is a resident of a foreign country and derives income from the United States is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

3. Section 954.—Foreign Base Company Income.—The effective rate of

tax that a foreign country will impose on income.

4. Section 7701.—Definitions.—Whether a foreign arrangement that is a participant in a domestic arrangement classified as a partnership for United States tax purposes will itself be classified as a partnership.

.02 General Areas.

1. The prospective application of the estate tax to the property or the estate of a living person, except that letter rulings may be issued on any international issues in a ruling request accepted pursuant to Rev. Proc. 88-50, 1988-2 C.B. 711, and § 5.05 of Rev. Proc. 96-1, page 8, this Bulletin.

2. The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

3. Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

4. Whether a proposed transaction would subject a taxpayer to criminal penalties.

5. Any area where the letter ruling request does not comply with the requirements of Rev. Proc. 96-1, page 8, this Bulletin.

6. Any area where the same issue is the subject of the taxpayer's pending request for competent authority assistance under a United States tax treaty.

7. A "comfort" ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (e.g., a request for a letter ruling required by a governmental regulatory authority in order to effectuate the transaction).

SEC. 4. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific Questions and Problems.

1. Section 367(a).—Transfers of Property from the United States.—Whether an oil or gas working interest is transferred from the United States for use in the active conduct of a trade or business for purposes of § 367(a)(3); and whether any other property is so transferred, where the determination requires extensive factual inquiry.

2. Section 367(b).—Other Transfers.—Whether a foreign corporation is

considered a corporation for purposes of any nonrecognition provision listed in § 367(b), and related issues, unless the letter ruling presents a significant legal issue or subchapter C rulings are requested in the context of reorganizations or liquidations involving foreign corporations. (These matters are dealt with in detail in § 7.367(b) of the Temporary Income Tax Regulations.)

3. Section 864.—Definitions and Special Rules.—Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864-2(c)(2); whether a taxpayer effects transactions in the United States in stocks or securities under § 1.864-2(c)(2); whether an instrument or item is a commodity as defined in § 1.864-2(d)(3); and for purposes of § 1.864-2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transaction is of a kind customarily consummated at such place.

4. Section 871.—Tax on Nonresident Alien Individuals.—Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 871(h).

5. Section 881.—Tax on Income of Foreign Corporations Not Connected with United States Business.—Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 881(c).

6. Section 892.—Income of Foreign Governments and of International Organizations.—Whether income received by local governmental authorities of the United Kingdom from certain United States investments of money allocable to their superannuation funds is exempt from federal income taxation.

7. Section 892.—Income of Foreign Governments and of International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 892, and whether income received by a foreign government is derived from the conduct of such commercial activities.

8. Section 893.—Compensation of Employees of Foreign Governments and International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 893, and whether the services of an employee of a foreign government are primarily in connection with such commercial activities.

9. Section 894.—Income Affected by Treaty.—Whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable to a permanent establishment in the United States.

10. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien student for services performed for a university or other educational institution is exempt from federal income tax or withholding under United States income tax treaties with Belgium, China, Cyprus, Egypt, Finland, France, Iceland, Japan, Korea, Morocco, the Netherlands, Norway, Pakistan, the Philippines, Poland, Romania, and Trinidad and Tobago. Rev. Proc. 87-8, 1987-1 C.B. 366, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

11. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien performing research or teaching at a university is exempt from federal income tax or withholding under United States income tax treaties with Belgium, China, Egypt, Finland, France, Hungary, Iceland, Italy, Jamaica, Japan, Korea, Luxembourg, the Netherlands, Norway, the Philippines, Poland, Romania, Sweden, Trinidad and Tobago, the former Union of the Soviet Socialist Republics, and the United Kingdom. Rev. Proc. 87-9, 1987-1 C.B. 368, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

12. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien teaching at a university is exempt from federal income tax or withholding under United States income tax treaties with Austria, Denmark, the Federal Republic of Germany, Greece, Ireland, Pakistan, and Switzerland. Rev. Proc. 87-9, 1987-1 C.B. 368, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

13. Section 894.—Income Affected by Treaty.—Whether a foreign recipient of payments made by a United States person is ineligible to receive the benefits of a United States tax treaty under the principles of Rev. Rul. 84-152, 1984-2 C.B. 381, as modified by Rev. Rul. 85-163, 1985-2 C.B. 249, and modified and clarified by Rev. Rul. 89-110, 1989-2 C.B. 275; and Rev. Rul. 84-153, 1984-2 C.B. 383, as modified by Rev. Rul. 85-163, 1985-2 C.B. 249, and modified and clarified by Rev. Rul. 89-110, 1989-2 C.B. 275.

14. Section 894.—Income Affected by Treaty.—Whether a recipient of payments is or has been a resident of a country for purposes of any United States tax treaty. Pursuant to § 1.884-5(f), however, the Service may rule whether a corporation representing that it is a resident of a country is a qualified resident thereof for purposes of § 884.

15. Section 901.—Taxes of Foreign Countries and of Possessions of the United States.—Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901-2A(c)(2).

16. Sections 927, 936, 954, 993.—Manufactured Product. Whether a product is manufactured or produced for purposes of §§ 927(a), 936(h)(5), 954(d), and 993(c).

17. Section 956.—Investment of Earnings in United States Property.—Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956-2(c)(2).

18. Section 985.—Functional Currency.—Whether a currency is the functional currency of a qualified business unit.

19. Section 989(a).—Qualified Business Unit.—Whether a unit of the taxpayer's trade or business is a qualified business unit.

20. Section 1058.—Transfers of Securities under Certain Agreements.—Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind

of income for purposes of any United States income tax treaty.

21. Section 2501.—Imposition of Tax.—Whether a partnership interest is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

22. Section 7701.—Tax on Nonresident Alien Individuals.—Whether an alien individual is either a resident or a nonresident of the United States, in situations where the determination depends on facts that cannot be confirmed until the close of the taxable year (including, for example, the length of the alien's stay or the nature of the alien's activities).

23. Section 7701.—Definitions.—Whether what is generally known as a foreign corporation will be classified as a partnership for United States tax purposes, if the taxpayer requests classification as a partnership; and whether a foreign partnership will be classified as an association for United States tax purposes, if the taxpayer requests classification as an association. Requests for advance letter rulings about the classification of foreign entities should be submitted according to Rev. Proc. 95-1, this Bulletin. The Office of Associate Chief Counsel (Domestic) coordinates the response to such requests with the Office of Associate Chief Counsel (International).

24. Section 7701.—Definitions.—Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

25. Section 7701.—Definitions.—Whether an intermediate entity is a conduit entity under section §1.881-3(a)(4); whether a transaction is a financing transaction under section §1.881-3(a)(ii); whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan under section §1.881-3(b); whether an intermediate entity performs significant financing activities under section §1.881-3(b)-(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under section §1.881-3(c).

.02 General Areas

1. Whether a taxpayer has a business purpose for a transaction or arrangement.

2. (a) Situations where a taxpayer or a related party is domiciled or orga-

nized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02.2(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

SEC. 5. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 95-7 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Gerard Traficanti of the Office of Associate Chief Counsel (International). For further information about this revenue procedure, please contact Mr. Traficanti at (202) 622-3830 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 96-8

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APPENDIX

SECTION 1. PURPOSE

This revenue procedure provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc. on matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations); requests for compliance statements under the Voluntary Compliance Resolution (VCR) program and the Standardized VCR Procedure (SVP) described in Rev. Proc. 94-62, 1994-2 C.B. 778; requests for correction statements under the Tax Sheltered Annuity Voluntary Correction Program (TVC program) described in Rev. Proc. 95-24, 1995-1 C.B. 694; and requests for administrative scrutiny determinations under Rev. Proc. 93-41, 1993-2 C.B. 536. The user fee program as it pertains to requests for letter rulings, etc. on matters under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), and the Associate Chief Counsel (International) is set forth separately in Rev. Proc. 96-1.

SECTION 2. CHANGES

The principal changes are as follows:

(1) The fee schedule has been revised by increasing many of the fees to reflect current costs; (2) a reduced user fee has been provided for in the case of certain substantially identical letter ruling requests; (3) an augmented fee has been provided for in the case in which the letter ruling requested involves several entities controlled by or associated with the entity requesting the letter ruling; (4) the correction fees applicable to requests for correction statements under the TVC program described in Rev. Proc. 95-24, 1995-1 C.B. 694, have been incorporated; (5) a separate user fee category, with a fee of \$2,100, has been established for letter rulings involving the determination of the account limit under § 419A(c); (6) the user fees applicable to applications for approval of nonmodel amendments to permit use of a simplified method of determining highly compensated employees (“HCEs”) under § 414(q) pursuant to the procedures described in Rev. Proc. 95-34, 1995-29 I.R.B. 7, has been incorporated; and (7) the user fee applicable to master and prototype and regional prototype plan mass submitters has been changed so that, instead of one fee for each basic plan document regardless of the number of adoption agreements, the fee is now applicable to the basic plan document with one adoption agreement, and an additional fee, of \$700, must be paid for each adoption agreement if more than one adoption agreement is submitted with the basic plan document.

SECTION 3. BACKGROUND

.01 *Legislation authorizing user fees.* § 10511 of the Revenue Act of 1987, Public Law No. 100-203, 101 Stat. 1330-382, 1330-446, enacted December 22, 1987, directed the Secretary of the Treasury or delegate (the “Secretary”) to establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees were to apply to requests made on or after February 1, 1988, and before September 30, 1990. § 11319 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, 1991-2 C.B. 481, 511, enacted November 5, 1990, amended subsection (c) of § 10511 of the Revenue Act of 1987 so as to make the user fees

applicable to requests made after September 30, 1990, and before October 1, 1995. § 743 of the Uruguay Round Agreements Act, Pub. L. 103-465, 1995-1 C.B. 230, 239, enacted December 8, 1994, amended subsection (c) of § 10511 of the Revenue Act of 1987 by making the user fees applicable to requests made after September 30, 1990, and before October 1, 2000. The fees charged under the program (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are to be payable in advance. The Secretary is to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in the statute.

.02 *Related revenue procedures.* The various revenue procedures that require payment of a user fee, a voluntary compliance fee under the VCR program or the SVP, a voluntary correction fee under the TVC program, or an administrative scrutiny determination user fee are described in the appendix to this revenue procedure.

SECTION 4. SCOPE

.01 *Requests to which a user fee applies.* In general, user fees apply to all requests for letter rulings, opinion letters, notification letters, determination letters, and advisory letters submitted by or on behalf of taxpayers, sponsoring organizations or other entities as described in this revenue procedure. Voluntary compliance fees applicable to requests under the VCR program or the SVP described in Rev. Proc. 94-62, voluntary correction fees applicable to requests under the TVC program described in Rev. Proc. 95-24, and administrative scrutiny determination user fees described in Rev. Proc. 93-41, are collected through the user fee program described in this revenue procedure. Requests to which a user fee, a voluntary compliance fee, a voluntary correction fee, or an administrative scrutiny determination user fee is applicable must be accompanied by the appropriate fee as determined from the fee schedule set forth in section 6 of this revenue procedure. The fee may be refunded as set forth in section 10.

.02 *Requests to which a user fee does not apply.* User fees do not apply to:

(1) Submissions with respect to the model amendment described in section 6 of Rev. Proc. 93-12, 1993-1 C.B. 479.

(2) Submissions with respect to the model amendment described in Rev. Proc. 93-47, 1993-2 C.B. 578.

(3) Elections made pursuant to section 4 of Rev. Proc. 92-85, 1992-2 C.B. 490, pertaining to automatic extensions of time under § 301.9100-1.

(4) Form 5305, Individual Retirement Trust Account. This model trust form may be used by an individual who wishes to adopt an individual retirement account under § 408(a) of the Internal Revenue Code. It should not be filed with the Service.

(5) Form 5305-A, Individual Retirement Custodial Account. This model custodial account form may be used by an individual who wishes to adopt an individual retirement account under § 408(a). It should not be filed with the Service.

(6) Requests for information letters.

(7) Change in accounting period or

accounting method permitted to be made by a published automatic change revenue procedure.

.03 *Exemptions from the user fee requirements.* The user fee requirements do not apply to:

(1) Departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling, determination letter, opinion letter or similar letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged has no bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code.

(2) Requests as to whether a worker is an employee for federal employment taxes and income tax withholding purposes (chapters 21, 22, 23, and 24 of subtitle C of the Code) submitted on Form SS-8, Information for Use in Determining Whether a Worker is an Employee for Federal Employment Taxes and Income Tax Withholding, or its equivalent. Such a request may be submitted in connection with an ap-

plication for a determination on the qualification of a plan when it is necessary to determine whether an employer-employee relationship exists. See section 6.12 of Rev. Proc. 96-6, page 160, this bulletin. In that case, although no user fee applies to the request submitted on Form SS-8, the applicable user fee must be paid in connection with the application for determination on the plan's qualification.

(3) Requests for an opinion letter or a notification letter with respect to an amendment of a previously approved master or prototype plan or a previously approved regional prototype plan, where the plan is being amended only to the extent necessary to meet the requirements of section 3 of Rev. Proc. 93-10, 1993-1 C.B. 476 (relating to nonstandardized safe harbor plans).

SECTION 5. DEFINITIONS

The following terms used in this revenue procedure are defined in the pertinent revenue procedures referred to below, which are described in the appendix:

Administrative scrutiny determination	Rev. Proc. 93-41
Adoption agreement	Rev. Procs. 89-9, 89-13
Advisory letter	Rev. Procs. 89-9, 96-6
Basic plan document	Rev. Procs. 89-9, 89-13
Compliance statement	Rev. Proc. 94-62
Correction statement	Rev. Proc. 95-24
Determination letter	Rev. Procs. 90-27, 96-6
Group exemption letter	Rev. Proc. 80-27
Information letter	Rev. Proc. 96-4
Letter ruling	Rev. Proc. 96-4
Mass submitter	Rev. Procs. 89-9, 89-13, 87-50
Mass submitter plan	Rev. Proc. 89-9
Mass submitter regional prototype plan	Rev. Proc. 89-13
Master plan	Rev. Proc. 89-9
Minor modification	Rev. Proc. 89-9, 87-50
Notification letter	Rev. Proc. 89-13, 96-4
Opinion letter	Rev. Proc. 89-9, 96-4
Prototype plan	Rev. Proc. 89-9
Regional prototype plan	Rev. Proc. 89-13
Sponsor	Rev. Proc. 89-13
Sponsoring organization	Rev. Proc. 89-9, 90-21
Standardized VCR Program (SVP)	Rev. Proc. 94-62
Voluntary Compliance Resolution (VCR) program	Rev. Proc. 94-62
Tax-Sheltered Annuity Voluntary Correction (TVC) program	Rev. Proc. 95-24
Volume submitter plan	Rev. Proc. 96-6
Volume submitter specimen plan	Rev. Proc. 96-6
Word-for-word identical adoption	Rev. Proc. 89-9, 87-50

SECTION 6. FEE SCHEDULE

The amount of the user fee payable with respect to each category or subcategory of submission is as set forth in the following schedule.

EMPLOYEE PLANS CATEGORY

FEE

.01 Employee plans letter ruling requests.

- | | |
|---|-------|
| (1) Computation of exclusion for annuitant under § 72 | \$75 |
| (2) Change in plan year (Form 5308) | \$150 |

NOTE: No user fee is required if the requested change is permitted to be made pursuant to the procedure for automatic approval set forth in Rev. Proc. 87-27, 1987-1 C.B. 769.

- | | |
|---|---------|
| (3) Change in funding method | \$400 |
| (4) Approval to become a nonbank trustee (see § 1.401-12(n) of the Income Tax Regulations) | \$3,000 |
| (5) Waiver of minimum funding standard, under § 412(d): | |
| (a) Waiver of \$1,000,000 or more | \$3,500 |
| (b) Waiver of less than \$1,000,000 | \$1,500 |
| (6) Letter ruling under Rev. Proc. 90-49, 1990-2 C.B. 620 | \$200 |
| (7) Letter ruling involving the determination of the account limit under § 419A(c) | \$2,100 |
| (8) Individually designed simplified employee pension (SEP) | \$2,100 |
| (9) Nonmodel amendment of individually designed SEP pursuant to the amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17) | \$400 |
| (10) Nonmodel amendment of individually designed SEP to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34 | \$400 |

NOTE: A single submission for Service approval may be made for plan amendments to include the simplified method of determining HCEs pursuant to the limited amendment procedures contained in sections 5(A) through 5(E) of Rev. Proc. 95-34 and to include plan language required under § 401(a)(31) pursuant to the limited amendment procedures contained in sections 7 through 10 of Rev. Proc. 93-12, and to reflect the OBRA '93 changes to § 401(a)(17) pursuant to the limited amendment procedures contained in section E of Part IV of Rev. Proc. 94-13. In such a case, only one application and the user fee for a single amendment need be submitted. See section 6 of Rev. Proc. 95-34.

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|---|---------|
| (11) All other letter rulings | \$2,100 |
| Reduced fees, or augmented fee, applicable to all other letter rulings: | |
| (a) Letter ruling requests by or on behalf of eligible retirement plans (within the meaning of § 402(c)(8)(B)) with assets of less than \$150,000 | \$600 |
| (b) Letter ruling requests from U.S. citizens and resident alien individuals, domestic trusts, and domestic estates whose "total income" as reported on their federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period, is less than \$150,000 | \$600 |

NOTE: The reduced fee applies to a married individual if the combined gross income of the applicant and the applicant's spouse is less than \$150,000. The gross incomes of the applicant and the applicant's spouse are not combined, however, if the applicant is legally separated from his or her spouse and the spouses do not file a joint income tax return with each other. In the case of a letter ruling request from a domestic estate or trust that, at the time the request is filed, has not filed an income tax return for a full taxable year, the reduced fee will be applicable if the decedent's or (in the case of an individual grantor) the grantor's total income as reported on the last return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this subparagraph, is less than \$150,000.

- | | |
|---|-------|
| (c) Letter ruling requests from organizations exempt from income tax under "Subchapter F-Exempt Organizations" with gross receipts of less than \$150,000 | \$600 |
|---|-------|

NOTE: An organization exempt from income tax under Subchapter F must certify in its request for a letter ruling that its gross receipts for the last full taxable year before the request was filed were less than \$150,000.

- | | |
|--|-------|
| (d) In situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, each additional letter ruling request after the \$2,100 fee or \$600 fee, as appropriate, has been paid for the first letter ruling | \$200 |
| (e) In situations in which a taxpayer requests a single letter ruling involving substantially identical issues of fact and law with respect to multiple members of a common entity, for each additional entity after the \$2,100 fee or \$600 reduced fee, as applicable, has been paid for the first entity | \$200 |

.02 Requests for certain administrative exemptions.

Requests for administrative exemptions for participant-directed transactions that are in compliance with the regulations under § 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) but may result in prohibited transactions under § 4975

\$2,100

NOTE: The provisions of Rev. Proc. 75-26, 1975-1 C.B. 722, are applicable to such requests.

.03 Administrative scrutiny determinations with respect to separate lines of business.

(1) For the first separate line of business for which a determination is requested \$3,250

(2) For each additional separate line of business for which a determination is requested \$1,000

.04 Opinion letters and advisory letters on master and prototype plans.

(1) Mass submitter M & P plan, per basic plan document, new or amended, with one adoption agreement \$3,600

(2) Mass submitter M & P plan, per each additional adoption agreement \$700

(3) Sponsoring organization's word-for-word identical adoption of M & P mass submitter's basic plan document (or an amendment thereof), per adoption agreement \$100

NOTE 1: Mass submitters that are sponsoring organizations in their own right are liable for this fee.

NOTE 2: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters with respect to a particular adoption agreement, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(4) Sponsoring organization's minor modification of M & P mass submitter's plan document, per adoption agreement \$400

(5) Nonmass submission (new or amended) by M & P sponsoring organization, per basic plan document \$3,000

(6) M & P mass submitter's request for an advisory letter with respect to the addition of optional provisions following issuance of a favorable opinion letter (see section 18.031(c) of Rev. Proc. 89-9), per basic plan document (regardless of the number of adoption agreements) \$400

(7) M & P mass submitter's addition of new adoption agreements after the basic plan document and associated adoption agreements have been approved, per adoption agreement \$700

(8) Assumption of sponsorship of an approved M & P plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number \$200

(9) Adoption, by M & P sponsoring organization or M & P mass submitter, of nonmodel amendment pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with the requirements of § 401(a)(31) \$400

(10) Adoption, by M & P sponsoring organization or M & P mass submitter, of nonmodel amendment pursuant to the amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17) \$400

(11) Adoption, by M & P sponsoring organization or M & P mass submitter (other than an identical adopter of an M & P mass submitter plan), of nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34 \$400

NOTE 1: Only one user fee is required for all plans submitted simultaneously by each sponsor, regardless of the number of plans affected.

NOTE 2: See note at section 6.01(10) of this revenue procedure.

.05 Notification letters issued by Headquarters Office of the Service on mass submitter regional prototype plans.

(1) Mass submitter regional prototype plan, per basic plan document, new or amended, with one adoption agreement \$3,600

(2) Mass submitter regional prototype plan, per each additional adoption agreement \$700

NOTE: Separate notification letters are required for sponsors utilizing mass submitter regional prototype plans. Such notification letters are issued by key district offices. The applicable user fee is set forth in section 6.11(1) of this revenue procedure.

(3) Regional prototype plan mass submitter's addition of new adoption agreements after the basic plan document and associated adoption agreements have been approved, per adoption agreement \$700

(4) Regional prototype plan mass submitter's adoption of nonmodel amendment pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with the requirements of § 401(a)(31) (Form 4461 or 4461-A) \$200

(5) Regional prototype plan mass submitter's adoption of nonmodel amendment pursuant to the amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17) \$200

(6) Regional prototype plan mass submitter's adoption of nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34 \$200

NOTE: See the note at section 6.01(10) of this revenue procedure.

.06 Opinion letters on prototype individual retirement accounts and/or annuities and simplified employee pensions, including salary reduction SEPs (SARSEPS).

(1) Mass submission of a prototype IRA or SEP, per plan document, new or amended \$1,000

(2) Sponsoring organization's word-for-word identical adoption of mass submitter's prototype IRA or SEP, per plan document or an amendment thereof \$100

NOTE: If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters with respect to a particular adoption agreement, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.

(3) Sponsoring organization's minor modification of mass submitter's prototype IRA or SEP, per plan document \$200

(4) Sponsoring organization's nonmass submission of prototype IRA or SEP (new or amended), per plan document (Form 5306 or Form 5306-SEP) \$500

(5) Amendment of an approved prototype SEP or SARSEP by a mass submitter, an identical adopter, or other sponsoring organization solely by the adoption of the Model Amendment reproduced in the Appendix to Rev. Proc. 91-44, per plan document \$100

(6) Adoption, by prototype SEP sponsor or SEP mass submitter, of nonmodel amendment pursuant to the alternative amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17) \$200

(7) Adoption, by prototype SEP sponsor or SEP mass submitter, of nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34 \$200

NOTE 1: See the note at section 6.01(10) of this revenue procedure.

NOTE 2: See Note 1 at section 6.04(11) of this revenue procedure.

.07 Compliance statements under VCR program.

(1) Request for a compliance statement under the VCR program:

(a) For a plan with assets of less than \$500,000, and no more than 1,000 plan participants \$500

(b) For a plan with assets of at least \$500,000, and no more than 1,000 plan participants \$1,250

(c) For a plan with more than 1,000 plan participants but less than 10,000 plan participants \$5,000

(d) For a plan with 10,000 or more plan participants \$10,000

NOTE: In establishing the number of plan participants, the plan sponsor will use the numbers from the most recently filed Form 5500 series.

(2) Request for a compliance statement under the SVP \$350

.08 Correction statements under TVC program.

(1) Request for a correction statement under the TVC program:

(a) For an employer with fewer than 25 employees \$350

(b) For an employer with at least 25 and no more than 1,000 employees \$1,250

(c) For an employer with more than 1,000 employees but less than 10,000 employees \$5,000

(d) For an employer with 10,000 or more employees \$10,000

.09 Employee plans determination letters.

(1) If the plan is intended to satisfy a design-based or nondesign-based safe harbor, or if the applicant is not electing to receive a determination with respect to any of the general tests, and the applicant is not electing to receive a determination with respect to the average benefit test:

(a) Form 5300 \$700

(b) Form 5303 \$700

(c) Form 5310 \$225

(d) Form 5307 \$125

(e) Form 6406 \$125

(f) Multiple employer plan:

(i) 2 to 10 employers \$700

(ii) 11 to 99 employers \$1,400

(iii) 100 to 499 employers	\$2,800
(iv) Over 499 employers	\$5,600

NOTE: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (1) above. If only one employer adopts the plan in any subsequent year, the fee would be \$700.

(2) If the applicant is electing to receive a determination with respect to the average benefit test and/or any of the general tests:

(a) Form 5300 or Form 5303	\$1,250
(b) Form 5307	\$1,000
(c) Form 5310	\$375
(d) Multiple employer plan:	
(i) 2 to 10 employers	\$1,250
(ii) 11 to 99 employers	\$2,000
(iii) 100 to 499 employers	\$3,500
(iv) Over 499 employers	\$6,500

NOTE: In the case of a multiple employer plan that is adopted by other employers after the initial submission, the fee would be the same as in paragraph (2) above. If only one employer adopts the plan in any subsequent year, the fee would be \$1,250.

(3) Group trusts contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326	\$750
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(4) Adoption of nonmodel amendment by employer maintaining an individually designed plan, pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with § 401(a)(31) of the Code (Form 6406)	\$125
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(5) Adoption of nonmodel amendment by employer that has previously adopted a volume submitter's specimen plan and wishes to utilize the version of the specimen plan that includes a nonmodel amendment pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with § 401(a)(31) (Form 5307)	\$125
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(6) Adoption of nonmodel amendment by employer maintaining an individually designed plan, pursuant to the alternative amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17)	\$125
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(7) Adoption of nonmodel amendment by employer that has previously adopted a volume submitter's specimen plan and wishes to utilize the version of the specimen plan that includes a nonmodel amendment pursuant to the alternative amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17)	\$125
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(8) Adoption of nonmodel amendment by employer that maintains an individually designed plan, including a previously approved volume submitter plan, to include simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34	\$125
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NOTE: See the note at section 6.01(10) of this revenue procedure.

(9) Adoption of nonmodel amendment by employer that has previously adopted a volume submitter's specimen plan and wishes to utilize the version of the specimen plan that includes a nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34	\$125
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NOTE: See the note at section 6.01(10) of this revenue procedure.

.10 *Advisory letters on volume submitter plans.*

(1) Volume submitter specimen plans	\$1,500
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NOTE: A practitioner that has received approval of a volume submitter specimen plan in a key district office must receive separate approval of the plan from each other key district office in which there are clients adopting substantially similar plans. If the practitioner certifies at the time of filing with the second key district office that the specimen plan is identical to a specimen plan approved by another key district office with respect to that practitioner and attaches a copy of that office's advisory letter, then the user fee that would otherwise be charged for the specimen plan will not be charged.

(2) Adoption, by sponsor of volume submitter specimen plan, of nonmodel amendment pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with the requirements of § 401(a)(31)	\$400
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(3) Adoption, by sponsor of volume submitter specimen plan, of nonmodel amendment pursuant to the alternative amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(A)(17)	\$400
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(4) Adoption, by sponsor of volume submitter specimen plan, of nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34	\$400
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NOTE: See the note at section 6.01(10) of this revenue procedure.

.11 *Notification letters issued by key district offices with respect to regional prototype plans.*

(1) Sponsor's identical adoption of mass submitter's regional prototype plan basic plan document, per adoption agreement (Form 4461-B) \$100

NOTE: Mass submitters that are sponsors in their own right are liable for this fee.

(2) Sponsor's nonmass submission of regional prototype plan, per adoption agreement (Form 4461 or 4461-A) \$1,500

(3) Adoption, by sponsor of regional prototype plan, of nonmodel amendment pursuant to the limited amendment procedure described in Rev. Proc. 93-12, to comply with the requirements of § 401(a)(31) (Form 4461 or 4461-A) \$400

(4) Adoption, by sponsor of regional prototype plan, of nonmodel amendment pursuant to the alternative amendment procedures described in Rev. Proc. 94-13, to comply with the requirements of § 401(a)(17) \$400

(5) Adoption, by sponsor of regional prototype plan, of nonmodel amendment to use simplified method of determining HCEs pursuant to the procedures described in Rev. Proc. 95-34 \$400

NOTE: See the note at section 6.01(10) of this revenue procedure.

EXEMPT ORGANIZATIONS CATEGORY

FEE

.12 *Exempt organizations letter rulings.*

(1) Applications with respect to change in accounting period (Form 1128) \$100

NOTE: No user fee is charged if the procedure described in Rev. Proc. 85-58, 1985-2 C.B. 740, is used by timely filing the appropriate information return, or if the procedure described in Rev. Proc. 76-10, 1976-1 C.B. 548, for organizations with group exemptions is followed.

(2) Applications with respect to change in accounting method (Form 3115) \$100

NOTE: No user fee is charged if the method described in Rev. Proc. 92-74, 1992-2 C.B. 442, or that described in Rev. Proc. 92-75, 1992-2 C.B. 448, is used. Taxpayers complying timely with whichever of those revenue procedures is applicable will be deemed to have obtained the consent of the Commissioner of Internal Revenue to change their method of accounting.

(3) Advance approval of scholarship grant-making procedures of a private foundation that has an agreement for the administration of the scholarship program with the National Merit Scholarship Corp., or similar organization administering a scholarship program shown to meet Service requirements \$100

(4) Request for a letter ruling as to whether an organization exempt from federal income tax is required to file an annual return under § 6033 \$200

NOTE 1: See Rev. Proc. 95-48, 1995-47 I.R.B. 13, which specifies that governmental units and affiliates of governmental units that are exempt from federal income tax under § 501(a) are not required to file annual information returns on Form 990, Return of Organization Exempt from Income Tax.

NOTE 2: There is no additional charge for a determination of § 6033 requirement from an organization seeking recognition of exempt status under § 501 if the organization submits the information required by line 9 of Part I of Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Code, or submits a separate written request with its application for recognition of exemption. Only the user fee for the initial application for recognition of exemption applies.

(5) Request for a confirmation letter dealing with private benefit/inurement issues on the tax-exempt status of the organization arising from proposed tax-exempt bond financing \$600

(6) All other letter rulings \$2,100

Reduced fees applicable to all other letter rulings:

(a) Organizations with gross receipts less than \$150,000 \$600

NOTE: An exempt organization seeking a reduced fee must certify in the letter ruling request that its gross receipts for the last taxable year before the request is filed were less than \$150,000.

(b) Letter ruling requests from U.S. citizens and resident alien individuals, domestic trusts, and domestic estates whose "total income" as reported on their federal income tax return (as amended) filed for a full (12 months) taxable year ending before the date the request is filed, plus any interest income not subject to tax under § 103 (interest on state and local bonds) for that period, is less than \$150,000 \$600

NOTE: The reduced fee applies to a married individual if the combined gross income of the applicant and the applicant's spouse is less than \$150,000. The gross incomes of the applicant and the applicant's spouse are not combined, however, if the applicant is legally separated from his or her spouse and the spouses do not file a joint income tax return with each other. In the case of a letter ruling request from a domestic estate or trust that, at the time the request is filed, has not filed an income tax return for a full taxable year, the reduced fee will be applicable if the decedent's or (in the case of an individual grantor) the grantor's total income as reported on the last return filed for a full taxable year ending before the date of death or the date of the transfer, taking into account any additions required to be made to total income described in this subparagraph, is less than \$150,000.

(c) Letter ruling requests in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or activity, or multiple members of a common entity, for each additional letter ruling request after the \$2,100 fee or \$600 reduced, as applicable, has been paid for the first letter ruling request \$200

.13 *Exempt organizations determination letters and requests for group exemption letters.*

(1) Initial application for exemption under § 501 or § 521 from organizations (other than pension, profit-sharing, and stock bonus plans described in § 401) that have had annual gross receipts averaging not more than \$10,000 during the preceding four years, or new organizations that anticipate gross receipts averaging not more than \$10,000 during their first four years \$150

NOTE: Organizations seeking this reduced fee must sign a certification with their application that the receipts are or will be not more than the indicated amounts.

(2) Initial application for exempt status from organizations otherwise described in paragraph (1) of this section 6.13 whose actual or anticipated gross receipts exceed the \$10,000 average annually \$465

NOTE: If an organization that is already recognized as exempt under § 501(c) seeks reclassification under another subparagraph of § 501(c), a new user fee will be charged whether or not a new application is required. An additional fee applies to organizations that seek recognition of exemption under § 501(c)(4) (unless requested at the time of the § 501(c)(3) application) for a period for which they do not qualify for exemption under § 501(c)(3) because their application was filed late and they do not qualify for relief under § 301.9100-1.

(3) Group exemption letters \$500

SECTION 7. MAILING ADDRESS FOR REQUESTING LETTER RULINGS, DETERMINATION LETTERS, ETC.

.01 *Matters handled by the Headquarters Office of the Service.* Requests should either be mailed to the appropriate address set forth in this section 7.01, or hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Avenue, N.W., Washington, D.C. No dated receipt will be given at the drop box.

(1) *Employee plans letter rulings under Rev. Proc. 78-37, 79-61, 79-62, 87-50, 90-49, 94-41, 94-42 or 96-4:*

**Internal Revenue Service
Attention: CP:E:EP
P.O. Box 14073, Ben Franklin Station
Washington, D.C. 20044**

(2) *Employee plans opinion letters, advisory letters, or notification letters (that is, notification letters with respect to mass submitters' regional prototype plans) under Rev. Proc. 89-9, 89-13 or 96-4:*

**Internal Revenue Service
Attention: CP:E:EP
P.O. Box 14073, Ben Franklin Station
Washington, D.C. 20044**

(3) *Employee plans compliance statements under Rev. Proc. 94-62:*

**Internal Revenue Service
Attention: CP:E:EP:VCR
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044**

(4) *Employee plans correction statements under Rev. Proc. 95-24:*

**Internal Revenue Service
Attention: CP:E:EP:TVC
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044**

(5) *Employee plans administrative scrutiny determinations under Rev. Proc. 93-41:*

**Internal Revenue Service
Attention: CP:E:EP**

**ADMINISTRATIVE SCRUTINY
P.O. Box 14073
Ben Franklin Station
Washington, D.C. 20044**

(6) *Exempt organizations letter rulings:*

**Internal Revenue Service
Attention: CP:E:E0
P.O. Box 120, Ben Franklin Station
Washington, D.C. 20044**

.02 *Matters handled by key district offices.* A request for a determination letter submitted pursuant to Rev. Proc. 92-24 or 96-6, a request for a notification letter submitted pursuant to Rev. Proc. 89-13 (other than with respect to a mass submitter's regional prototype plan), a request for an advisory letter with respect to a volume submitter specimen plan, or an application for recognition of exemption submitted pursuant to Rev. Proc. 90-27 should be sent to the following address:

EMPLOYEE PLANS APPLICATIONS

If entity is in:

Send request for determination letter, notification letter, or advisory letter to this address:

Connecticut, Maine,
Massachusetts,
New Hampshire, New York,
Rhode Island, Vermont

Internal Revenue Service
EP/EO Division
P.O. Box 1680, GPO
Brooklyn, NY 11202

Delaware,
District of Columbia,
Maryland, New Jersey,
Pennsylvania, Virginia, any U.S.
possession or foreign country

Internal Revenue Service
EP/EO Division
P.O. Box 17288
Baltimore, MD 21203

Indiana, Kentucky,
Michigan, Ohio,
West Virginia

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Arizona, Colorado,
Kansas, Oklahoma,
New Mexico, Texas,
Utah, Wyoming

Internal Revenue Service
EP/EO Division
Mail Code 4950 DAL
1100 Commerce Street
Dallas, TX 75242

Alabama, Arkansas,
Florida, Georgia,
Louisiana, Mississippi,
North Carolina, South Carolina,
Tennessee

Internal Revenue Service
EP/EO Division
P.O. Box 941
Atlanta, GA 30370

Alaska, California,
Hawaii, Idaho, Nevada,
Oregon, Washington

Internal Revenue Service
EP Application
EP/EO Division
McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755-7406

Illinois, Iowa, Minnesota,
Missouri, Montana, Nebraska,
North Dakota, South Dakota,
Wisconsin

Internal Revenue Service
EP/EO Division
230 S. Dearborn DPN 20-6
Chicago, IL 60604

EXEMPT ORGANIZATIONS APPLICATIONS

If entity is in:

Send request for determination letter to this address:

Connecticut, Maine,
Massachusetts, New Hampshire,
New York, Rhode Island,
Vermont

Internal Revenue Service
EP/EO Division
P.O. Box 1680, GPO
Brooklyn, NY 11202

Delaware, District of Columbia,
Maryland, New Jersey,
Pennsylvania, Virginia, any U.S.
possession or foreign country

Internal Revenue Service
EP/EO Division
P.O. Box 17010
Baltimore, MD 21203

Indiana, Kentucky, Michigan,
Ohio, West Virginia

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Arizona, Colorado, Kansas,
Oklahoma, New Mexico, Texas,
Utah, Wyoming

Internal Revenue Service
EP/EO Division
Mail Code 4950 DAL
1100 Commerce Street
Dallas, TX 75242

Alabama, Arkansas, Florida,
Georgia, Louisiana, Mississippi,
North Carolina, South Carolina,
Tennessee

Alaska, California, Hawaii,
Idaho, Nevada, Oregon,
Washington

Illinois, Iowa, Minnesota,
Missouri, Montana, Nebraska,
North Dakota, South Dakota,
Wisconsin

Internal Revenue Service
EP/EO Division
P.O. Box 941
Atlanta, GA 30370

Internal Revenue Service
EO Application
EP/EO Division
McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755-7406

Internal Revenue Service
EP/EO Division
230 S. Dearborn DPN 20-5
Chicago, IL 60604

NOTE: The preceding list does not reflect the reorganization of districts and regions pursuant to Treasury Order 150-01, 1995-44 I.R.B. 23, dated September 28, 1995. Previously, on January 28, 1995, the Commissioner of Internal Revenue announced that the Service will centralize its employee plans and exempt organizations determination letter program in Cincinnati, Ohio. The centralization will be phased in, one key district at a time, beginning in 1996. Announcement 95-51, 1995-25 I.R.B. 132, states that the Service will notify the public in advance of the phase in of each key district office. Until such notice is given, employers and organizations should continue to submit their requests for determination letters to the key district offices designated above.

SECTION 8. REQUESTS INVOLVING MULTIPLE OFFICES, FEE CATEGORIES, ISSUES, TRANSACTIONS, OR ENTITIES

.01 *Requests involving several offices.* If a request dealing with only one transaction involves more than one of the offices within the Headquarters Office (for example, one issue is under the jurisdiction of the Associate Chief Counsel (Domestic) and another issue is under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations)), only one fee applies, namely the highest fee that otherwise would apply to each of the offices involved. See Rev. Proc. 96-1, this bulletin, for the user fees applicable to issues under the jurisdiction of the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), the Associate Chief Counsel (Enforcement Litigation), or the Associate Chief Counsel (International).

.02 *Requests involving several fee categories.* If a request dealing with only one transaction involves more than one fee category, only one fee applies, namely the highest fee that otherwise would apply to each of the categories involved.

.03 *Requests involving several issues.* If a request dealing with only one transaction involves several issues, or a request for a change in accounting method dealing with only one item or sub-method of accounting involves several issues, or a request for a change in

accounting period dealing with only one item involves several issues, the request is treated as one request. Therefore, only one fee applies, namely the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction will not result in an additional fee, unless the issue places the transaction in a higher fee category.

.04 *Requests involving several unrelated transactions.* If a request involves several unrelated transactions, or a request for a change in accounting method involves several unrelated items or sub-methods of accounting, or a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction or item. An additional fee will apply if the request is changed by the addition of an unrelated transaction or item not contained in the initial submission.

.05 *Requests for separate letter rulings for several entities.* Each entity involved in a transaction (for example, an exempt hospital reorganization) that desires a separate letter ruling in its own name must pay a separate fee regardless of whether the transaction or transactions may be viewed as related. In certain situations, however, a reduced fee may be charged. See sections 6.01(11)(d) and (e) and 6.12(6)(c) of this revenue procedure.

SECTION 9. PAYMENT OF FEE

.01 *Method of payment.* Each request to the Service for a letter ruling, determination letter, opinion letter, etc. must be accompanied by a check or money order, payable to the Internal Revenue Service, in the appropriate amount. Taxpayers should not send cash.

.02 *Transmittal forms.* Form 8717, User Fee for Employee Plan Determination Letter Request, and Form 8718, User Fee for Exempt Organization Determination Letter Request, are intended to be used as attachments to determination letter applications. Space is reserved for the attachment of the applicable user fee check or money order. No similar form has been designed to be used in connection with requests for letter rulings, opinion letters, notification letters, advisory letters, compliance statements, correction statements or administrative scrutiny determinations.

.03 *Effect of nonpayment or payment of incorrect amount.* It will be the general practice of the Service that:

(1) Except in the case of requests for determination letters or opinion letters as to the qualification of employee plans (see paragraph (2) below), the respective offices within the Service that are responsible for issuing letter rulings, determination letters, etc. will exercise discretion in deciding whether to immediately return submissions that are not accompanied by a properly completed check or money order or

that are accompanied by a check or money order for less than the correct amount. In those instances where the submission is not immediately returned, the requester will be contacted and given a reasonable amount of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire submission will then be returned. However, the respective offices of the Service, in their discretion, may defer substantive consideration of a submission until proper payment has been received.

(2) If a request for a determination letter or opinion letter as to the qualification of an employee plan is not accompanied by a properly completed check or money order or if the request is accompanied by a check or money order for less than the correct amount, the entire submission will be returned to the requester.

(3) An application for a determination letter will not be returned merely because Form 8717 or Form 8718 was not attached.

(4) The return of a submission to the requester may adversely affect substantive rights if the submission is not perfected and resubmitted to the Service within 30 days of the date of the cover letter returning the submission. Examples of this are: (a) where an application for a determination letter is submitted prior to the expiration of the remedial amendment period under § 401(b) and is returned because no user fee was attached, the submission will be timely if it is resubmitted by the expiration of the remedial amendment period or, if later, within 30 days after the application was returned; and (b) where an application for exemption under § 501(c)(3) is submitted before expiration of the period provided by § 1.508-1(a)(2) and is returned because no user fee was attached, the submission will be timely if it is resubmitted before expiration of the period provided by § 1.508-1(a)(2) or within 30 days, whichever is later.

(5) If a check or money order is for more than the correct amount, the submission will be accepted and the amount of the excess payment will be returned to the requester.

SECTION 10. REFUNDS

.01 *General rule.* In general, the fee will not be refunded unless the Service declines to rule on all issues for which

a ruling is requested. In the case of a request for a letter ruling, if the case has been closed by the Service because essential information has not been submitted timely, the request may be reopened and treated as a new request, but the taxpayer must pay another user fee before the case can be reopened. See section 11.04(4) of Rev. Proc. 96-4, page 94, this bulletin.

.02 *Examples.*

(1) **The following situations are examples of situations in which the fee will not be refunded:**

(a) The request for a letter ruling, determination letter, etc. is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the requester that a higher user fee than was sent with the request is applicable and the requester is unwilling to pay the higher fee.

(b) The request is procedurally deficient, although accompanied by the proper fee and is not timely perfected by the requester. When there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure.

(c) A letter ruling, determination letter, etc. is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc. was requested will not be refunded.

(d) The request contains several issues and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(e) The taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or not responsive (other than an issue on which the Service has declined to rule) and requests reconsideration. The Service, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive. The fee accompanying the request for reconsideration will not be refunded.

(f) The situation is the same as described in subparagraph (e) of this section 10.02(1) except that the letter ruling covered several unrelated transactions. The Service, upon reconsideration, does not agree with the taxpayer that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is er-

roneous as to one transaction. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to the transaction for which the Service agrees the letter ruling was in error.

(g) The request is for a supplemental letter ruling, determination letter, etc. concerning a change in facts (whether significant or not) relating to the transaction ruled on.

(h) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) **The following situations are examples of situations in which the fee will be refunded:**

(a) In a situation to which section 10.02(1)(h) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Service declined to rule) and requests reconsideration. The Service agrees, upon reconsideration, that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 10.02(1)(h) of this revenue procedure does not apply, the requester requests a supplemental letter ruling, determination letter, etc. to correct a mistake that the Service agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once the Service agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc. will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation in whole or in part, of a previously issued letter ruling, determination letter, etc. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 10.02(1)(d) of this revenue procedure applied, the taxpayer requests reconsideration of the Service's decision not to rule on an issue. Once the Service agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

SECTION 11. REQUEST FOR RECONSIDERATION OF USER FEE

A taxpayer that believes the user fee charged by the Service for its request for a letter ruling, determination letter, etc. is either not applicable or incorrect and wishes to receive a refund of all or

part of the amount paid (see section 10 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Internal Revenue Service at the applicable Post Office Box or other address given in this section 11. Both the incoming envelope

and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request should be marked for the attention of:

If the matter involves primarily:

Employee plans letter ruling requests and all other employee plans matters handled by the Headquarters Office

Exempt organizations letter ruling requests

Employee plans and/or exempt organizations determination letter requests

Mark for the attention of:

Director, Employee Plans Division, CP:E:EP

Director, Exempt Organizations Division, CP:E:EO

Chief, Technical/Review Staff

____ Key District Office (Add name of key district office handling the request.)

SECTION 12. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 95-8 is superseded.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective January 2, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is John H. Turner of the Employee Plans Division. For further information regarding this revenue procedure, contact Mr. Turner at (202) 622-6214 (not a toll-free number).

APPENDIX

Following is a list of revenue procedures requiring payment of a user fee, an administrative scrutiny determination user fee, a voluntary compliance fee, or a voluntary correction fee.

A. Procedures applicable to both Employee Plans and Exempt Organizations:

Rev. Proc. 96-4, this bulletin, provides procedures for issuing letter rulings, information letters, etc. on matters relating to matters under the jurisdiction of the Assistant Commis-

sioner (Employee Plans and Exempt Organizations).

B. Procedures Applicable to Employee Plans Matters other than Actuarial Matters:

Rev. Proc. 75-26, 1975-1 C.B. 722, sets forth the general procedures of the Department of Labor and the Internal Revenue Service for the processing of applications for exemption under § 408(a) of ERISA and § 4975(c)(2) of the Code.

Rev. Proc. 87-50, 1987-2 C.B. 647, as modified by Rev. Proc. 91-44 and Rev. Proc. 92-38, sets forth the procedures of the Service relating to the issuance of rulings and opinion letters with respect to the establishment of individual retirement accounts and annuities (IRAs) under § 408, the entitlement to exemption of related trusts or custodial accounts under § 408(e), and the acceptability of the form of prototype simplified employee pension (SEP) agreements under §§ 408(k) and 415.

Rev. Proc. 89-9, 1989-1 C.B. 780, as modified by Rev. Proc. 90-21; Rev. Proc. 92-41, 1992-1 C.B. 870; Rev. Proc. 93-9, 1993-1 C.B. 474; Rev. Proc. 93-12; and Rev. Proc. 94-13; and as supplemented by Rev. Proc. 93-10, 1993-1 C.B. 476, sets forth the procedures of the Service pertaining to the issuance of opinion letters relating to master or prototype pension, profit-sharing and annuity plans involving

§§ 401 and 403(a), as amended by the Tax Reform Act of 1986 (TRA '86), the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), and the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and the status for exemption of related trusts or custodial accounts under § 501(a).

Rev. Proc. 89-13, 1989-1 C.B. 801, as modified by Rev. Proc. 90-21, Rev. Proc. 92-41, Rev. Proc. 93-9 and Rev. Proc. 93-12, and as supplemented by Rev. Proc. 93-10, sets forth the procedures of the Service for issuing notification letters relating to the qualification, as to form, of certain regional prototype defined contribution plans and defined benefit plans, and provides guidance with respect to the issuance of determination letters to employers adopting such plans as to whether the plans as adopted qualify under §§ 401 and 403(a) and as to whether any related trusts or custodial accounts are exempt under § 501(a).

Rev. Proc. 90-21, 1990-1 C.B. 499, modified Rev. Procs. 89-9 and 89-13 regarding certain requirements for approval by the Service of master and prototype (M & P) pension, profit-sharing and annuity plans and regional prototype plans.

Rev. Proc. 91-44, 1991-2 C.B. 733, modified Rev. Proc. 87-50 (section 2.10) and Notice 87-62, 1987-2 C.B. 374, to permit a mass submitter or

sponsoring organization to obtain an opinion letter for a prototype simplified employee pension (SEP) agreement that provides for contributions pursuant to an employee's election as described in § 408(k)(6). The revenue procedure provides a model amendment that a sponsor may use verbatim to add elective deferral provisions to an existing prototype SEP and also provides two other formats for sponsors to use to add elective deferral provisions to existing prototype SEPs or to use with new prototype SEPs that provide for elective deferrals.

Rev. Proc. 92-24, 1992-1 C.B. 739, provides procedures for requesting determination letters on the effect on a plan's qualified status under § 401(a) of the Code of plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefits account described in § 401(h).

Rev. Proc. 92-38, 1992-1 C.B. 859, provides notice that individual retirement arrangement trusts, custodial account agreements, and annuity contracts must be amended to provide for the required distribution rules in § 408(a)(6) or (b)(3). In addition, Rev. Proc. 92-38 modifies the guidance in Rev. Proc. 87-50 with regard to opinion letters issued to sponsoring organizations, including mass submitters and sponsors of prototype IRAs.

Rev. Proc. 93-12, as modified by Rev. Proc. 93-39, provides a simplified method for master and prototype plan sponsoring organizations or mass submitters, regional prototype plan sponsors or mass submitters, volume submitter specimen plan sponsors, and sponsors of individually designed plans which have received favorable opinion, notification, advisory, or determination letters to amend their plans to comply with § 401(a)(31) by adopting either a model amendment or a nonmodel amendment for approval by the Service.

Rev. Proc. 93-41, 1993-2 C.B. 536, sets forth the procedures of the Service relating to the issuance of an administrative scrutiny determination as to whether a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6.

Rev. Proc. 94-13, 1994-1 C.B. 566, provides guidance for certain sponsors of qualified plans and SEPs on amending their plans to reflect the modifica-

tions made by § 13212 of OBRA '93 to § 401(a)(17).

Rev. Proc. 94-62, 1994-39 I.R.B. 11, describes the Voluntary Compliance Resolution (VCR) program and the Standardized VCR Procedure (SVP). The VCR program permits plan sponsors (including employers, plan administrators and trustees) to correct operational plan defects that they have identified. Certain other operational defects may be corrected under the SVP, pursuant to rules set forth in the applicable sections of Rev. Proc. 94-62.

Rev. Proc. 95-24, 1995-1 C.B. 694, establishes the Tax Sheltered Annuity Voluntary Correction Program (TVC program). The TVC program permits an employer that offers a tax sheltered annuity plan under § 403(b) of the Code to voluntarily identify and correct defects in the plan. Employers that request consideration under the TVC program, agree to correct the identified defects, and pay the negotiated sanction, will receive written assurance that the corrections are acceptable and that the Service will not pursue revocation of the income tax exclusion with respect to the violations identified and corrected.

Rev. Proc. 95-34, 1995-29 I.R.B. 7, provides a simplified method for amending certain plans to use the simplified method of determining highly compensated employees provided in Rev. Proc. 93-42, 1993-2 C.B. 540, by adopting either model plan language or a nonmodel amendment for approval by the Service.

Rev. Proc. 96-6, this bulletin, provides procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409, and 4975(e)(7).

C. Employee Plans Actuarial Matters:

Rev. Proc. 78-37, 1978-2 C.B. 540, sets forth the procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method as provided by § 412(c)(5) and § 302(c)(5) of ERISA.

Rev. Proc. 79-61, 1979-2 C.B. 575, outlines the procedure by which a plan administrator or plan sponsor may request and obtain approval for an extension of an amortization period in accordance with § 412(e) and § 304(a) of ERISA.

Rev. Proc. 79-62, 1979-2 C.B. 576, outlines the procedure by which a plan sponsor or administrator may request a determination that a plan amendment is reasonable and provides for only *de minimis* increases in plan liabilities in accordance with § 412(f)(2)(A) and § 304(b)(2)(A) of ERISA.

Rev. Proc. 90-49, 1990-2 C.B. 620, modifies and replaces Rev. Proc. 89-35, 1989-1 C.B. 917, in order to extend the effective date to contributions made for plan years beginning after December 31, 1989, to change the deadline for requesting rulings under the revenue procedure, to revise the information requirements for a ruling request made under the revenue procedure, to furnish a worksheet for actuarial computations, and to provide a special rule under which certain *de minimis* nondeductible employer contributions to a qualified defined benefit plan may be returned to the taxpayer without a formal ruling or disallowance from the Service.

Rev. Proc. 94-41, 1994-1 C.B. 711, sets forth procedures for requesting waivers of the minimum funding standard described in § 412(d) and the issuance of such waivers by the Assistant Commissioner (Employee Plans and Exempt Organizations).

Rev. Proc. 94-42, 1994-1 C.B. 717, supersedes Rev. Proc. 79-18, 1979-1 C.B. 525, and Rev. Rul. 79-215, 1979-2 C.B. 190, and sets forth a procedure for obtaining approval of an amendment to a qualified plan that, under § 412(c)(8), reduces the accrued benefits of plan participants.

D. Procedures Applicable to Exempt Organizations Matters Only:

Rev. Proc. 80-27, 1980-1 C.B. 677, provides procedures under which recognition of exemption from federal income tax under § 501(c) may be obtained on a group basis for subordinate organizations affiliated with and under the general supervision or control of a central organization. This procedure relieves each of the subordinates covered by a group exemption letter from filing its own application for recognition of exemption.

Rev. Proc. 90-27, 1990-1 C.B. 514, sets forth revised procedures with regard to applications for recognition of exemption from federal income tax under §§ 501 and 521.

Part IV. Items of General Interest

Cumulative List of Announcements Relating to Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings from January 1, 1995 through December 31, 1995

The following is a cumulative listing of names of organizations that are presently challenging, under section 7428 of the Internal Revenue Code, the revocation of their status as organizations entitled to receive deductible contributions in declaratory judgment suits in the Tax Court, the United States District Court for the District of Columbia, or the United States Court of Federal Claims. The purpose of this announcement is to inform potential donors to these organizations of the protection under 7428(c) for certain contri-

butions made during the litigation period.

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being treated as one

contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

I. The organizations listed below continue to be involved in pending declaratory judgment suits under section 7428 of the Code, challenging revocation of their status as eligible donees under section 170(c)(2). Protection under section 7428(c) begins on the date indicated.

Anclote Psychiatric Center, Inc. (January 27, 1992)	Tarpon Springs, FL
Colorado Reform Baptist Church, Inc. (January 22, 1991)	Colorado Springs, CO
Faith Christian Ministries Church, Inc. (November 7, 1991)	Fenton, MO
Gates Community Chapel of Rochester, Inc. (November 21, 1994)	Lakemont, NY
LAC Facilities, Inc. (f/k/a Modern Health Care Services, Inc.) (August 29, 1994)	North Miami Beach, FL
New Hope Spiritual Center (March 28, 1994)	Zephyr Hills, FL
Jack Rehburg Ministries (a/k/a Total Christian Television) (May 3, 1993)	Snow Camp, NC
Textile Arts Foundation (February 22, 1994)	Washington, DC
United Cancer Council, Inc. (March 25, 1991)	Indianapolis, IN

II. The Organizations listed below have timely filed declaratory judgment suits under section 7428 of the Code during 1995. Protection under section 7428(c) begins on the date indicated.

Branch Ministries, Inc. (d/b/a The Church at Pierce Creek) (April 10, 1995)	Binghamton, NY
Christe, Inc. (December 18, 1995)	Cincinnati, OH
Christian Communications Network (October 2, 1995)	La Mesa, CA

Greater Damascus Baptist Church
(November 20, 1995)
HAC Corporation (a/k/a Hobgood Academy)
(July 3, 1995)
Philippi Missionary Baptist Church
(November 20, 1995)

Dayton, OH
Hobgood, NC
Dayton, OH

III. Pursuant to section 7428(c)(1), a court has determined that the organizations listed below are no longer described in section 170(c)(2) of the Code. Protection under section 7428(c) has terminated effective on the date indicated.

America's Battered Children
(April 4, 1995)
Cleveland American Indian Center, Inc.
(November 21, 1994)
Coalition for Freedom, Inc.
(December 20, 1994)

Van Alstyne, TX
Cleveland, OH
Raleigh, NC

IV. This Announcement serves notice to potential donors that a court has determined that the organization listed below continues to be described in section 170(c)(2) of the Internal Revenue Code.

George W. McManus Foundation, Inc.
(May 25, 1993)

Baltimore, MD

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior

ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If

If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
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- 26 CFR 1.7704-1, added; classification of certain publicly traded partnerships as corporations (TD 8629) 52, 14
- 26 CFR 301.6109-2, amended; authority of Sec. of Agriculture to share EIN collected from retail food stores and wholesale food concerns (TD 8621) 43, 5
- 26 CFR 301.6867-1, added; 301.6867-1T, removed; presumptions where owner of large amount of cash is not identified (TD 8605) 36, 17
- 26 CFR 301.7514-1, amended; seals of office (TD 8625) 46 10
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